

COMPETITION & MARKETS AUTHORITY
RETAINED LINER SHIPPING
CONSORTIA BLOCK EXEMPTION REGULATION

RESPONSE TO CONSULTATION

23 February 2023

BY



1. This submission is made on behalf of the World Shipping Council (“**WSC**”), International Chamber of Shipping (“**ICS**”) and the Asian Shipowners’ Association (“**ASA**”) (collectively, the “**Associations**”) in response to the consultation conducted by the Competition & Markets Authority (“**CMA**”) on the CMA’s proposed recommendation to the Secretary of State to replace the Retained CBER¹ with a Consortia Block Exemption Order (“**CBEO**”) under section 6(1) of the Competition Act 1998 when it expires on 25 April 2024 (“**Proposed Recommendation**”).
2. The Associations support the CMA’s Proposed Recommendation and welcome the opportunity to provide their further views. This submission is organised as follows:
 - a. Part I contains the Associations’ response to each of the policy and impact questions raised in the CMA’s Consultation Document.
 - b. Part II provides an update on the latest market developments and data that clearly demonstrate that increased freight rates and reduced reliability during the pandemic were the product of market forces and not attributable to carriers or consortia.² The latest market data is consistent with the evidence presented in the Associations’ prior submissions, demonstrating the healthy state of competition in the liner shipping sector that has seen rates fall as conditions return rapidly to pre-pandemic norms.
 - c. Part III reproduces the Associations’ submission to the CMA dated 24 November 2022 containing relevant background and evidence to aid its review of the Retained CBER, including three expert economic reports.
3. The Retained CBER facilitates the creation and operation of consortia by greatly reducing the compliance burden for carriers (including compliance costs) and by providing sector-specific legal certainty.³ In view of the vital role that consortia play in underpinning international trade and providing cost, climate and operational efficiency to global maritime supply chains, the Associations support the CMA’s proposal to replace the Retained CBER when it expires on 25 April 2024 with a CBEO. The Associations submit that the

¹ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), referred to in this paper as the “**Retained CBER**”.

² This information complements the position set out in the CMA CBER Consultation at paras. 3.7 – 3.9.

³ As acknowledged by the CMA at paras. 1.6; 4.20 – 4.23, CMA CBER Consultation.

provisions of the Retained CBER should be maintained in the CBEO without any amendments save as to the duration of the CBEO, in relation to which the Associations support the CMA's proposal that the CBEO be of indefinite duration. The Associations would be happy to answer any questions that the CMA might have in relation to the present submission and remain at the CMA's disposal as it moves toward a final recommendation.

PART I

CONSULTATION QUESTIONS

1. The policy and impact questions raised in the CMA's Consultation Document are reproduced below, followed by the response to each question provided by the World Shipping Council, International Chamber of Shipping and the Asian Shipowners Association (hereafter "**The Associations**").

A. GENERAL RECOMMENDATION

I. Policy question

Question 1: Do you agree with the CMA's proposed recommendation to the Secretary of State to make a block exemption order to replace the retained CBER?

2. Yes. the Associations support the CMA's proposed recommendation to the Secretary of State to make a block exemption order to replace the Retained CBER.¹

II. Impact Questions

Question 2: Relative to current arrangements, if the retained CBER were allowed to expire, how would the absence of legal certainty and clarity affect your business or those that you represent? Please describe the scale of any legal or expert advice needed (e.g., time spent with consultants).

3. The Retained CBER provides a high level of legal certainty and precise guidance to the liner shipping industry by using industry-specific terminology and referring to arrangements that are specific to consortia. In-house legal and economic professionals working in the liner shipping industry understand how to apply the CBER in practice, without needing to consult external advisors (save for special cases). This not only saves time, but it also reduces costs significantly, especially for carriers that are members of multiple different consortia. The Retained CBER is also understood by operational personnel who manage vessel deployments and network design, thus

¹ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), referred to in this paper as the "**Retained CBER**". This regulation was retained in UK law after EU law generally ceased to have effect in the UK on 1 January 2021, as a result of a combination of the operation of the European Union (Withdrawal) Act 2018 and the Competition (Amendment etc.) (EU Exit) Regulations 2019, as amended by the Competition (Amendment etc.) (EU Exit) Regulations 2020.

allowing for faster implementation of operational changes that are necessary to reflect new or amended consortia agreements.

4. If the Retained CBER were allowed to expire, carriers would lose the legal certainty and tailored guidance referenced above. To assess whether their consortia agreements comply with UK competition law, carriers would need to carry out a self-assessment pursuant to Section 9, Competition Act 1998 (“**Self-Assessment**”). Self-Assessments are more time-consuming than assessments under the Retained CBER and they can potentially lead to indeterminate conclusions. Furthermore, the costs associated with a Self-Assessment are invariably higher than the costs associated with an assessment under the Retained CBER.² These additional costs are likely to be disproportionately burdensome for small and medium sized carriers and this could deter such carriers from participating in consortia.
5. Whilst the Associations are not in a position to quantify the “*scale of any legal or expert advice needed (eg time spent with consultants)*” (the Associations must defer to their members in that regard), they would note the findings of the European Commission (“**Commission**”), in its prior evaluation of the EU CBER, that a lack of guidance tailored to consortia “*may require carriers to seek the advice of external experts and may leave a degree of uncertainty given the need for legal interpretations*”.³ The Commission also noted that one carrier that responded to the Commission’s consultation “*estimated that an external assessment (with an economic study) for a new consortium could cost more than EUR 200 000 (to be shared between the parties), while a self-assessment under the Consortia BER could cost as little as EUR 1000.*”⁴

² According to the European Commission: “*it is clear that [the cost of a compliance assessment] would increase in the absence of the Consortia BER. This increase could be principally significant for small and medium carriers*”. Commission Staff Working Document, Evaluation of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), SWD(2019) 411 final, (“**2019 SWD**”), Section 5.2, page 19, available at: https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_evaluation.pdf

³ 2019 SWD, Section 5.1, page 18.

⁴ 2019 SWD, Section 5.2, page 19.

Question 3: Please describe the business channels through which the retained CBER currently affects UK consumers. How would UK consumers be affected if the retained CBER were allowed to expire?

6. To understand the importance of the Retained CBER to UK consumers, it is necessary to first understand the various ways in which UK consumers benefit from consortia. First, consortia allow carriers to optimise the use of vessel capacity. This generates economies of scale and cost savings for carriers, which can be passed on to UK consumers in the form of lower prices. Second, consortia improve connectivity by allowing carriers to offer a higher frequency of sailings to a greater number and greater variety of ports relative to independent service offerings.
7. If the UK replaces the Retained CBER with equivalent legislation on expiry, this will incentivise lines to make direct calls in the UK, resulting in lower costs and shorter transit times for UK exporters and importers. Accordingly, consortia give UK consumers more choice regarding: (i) the departure date for their cargo; (ii) the ports from which they can ship their cargo; and (iii) the ports to which they can ship their cargo.⁵ Third, because consortia cooperation only extends to operational matters, and carriers operating within a consortium have limited scope to differentiate their ocean services within that consortium, they compete fiercely on price, which benefits UK consumers.⁶ Finally, consortia are not only economically efficient, but they also generate significant environmental efficiencies that benefit the entirety of the UK. This is because larger containerships – which *ceteris paribus* can more likely be operated viably in a consortium – result in vastly lower greenhouse gas and other emissions per container transported than smaller containerships.

⁵ See further, Submission of 24 November 2022 (the “**Associations’ Paper**”), para. 26 and Annex II to the Associations’ Paper, which is a report prepared by RBB Economics (“**RBB Report II**”), Section 3.3, Table 3, page 10, setting out the variety of services and capacity offered to customers and, in particular, that (as of September 2022) 33 different carriers operated 91 unique services calling at UK ports, and that 32 of those services were provided by consortia.

⁶ Consortia members compete with one another to sell their allocated capacity on the vessels that are used to operate the joint service. In that regard, each consortia member sets their own price, independent of the pricing strategies of other members. As discussed in Annex I to the Associations’ Paper, which is a report prepared by RBB Economics (“**RBB Report I**”) (pages 5, 14) and RBB Report II (page 3), Members are not compensated for unused capacity on the consortia vessels; therefore, they have a strong incentive to compete on price to maximise their capacity utilisation.

8. The Retained CBER facilitates the creation and operation of consortia by greatly reducing the compliance burden for carriers (including compliance costs) and by providing sector-specific legal certainty. There is no alternative source of UK guidance that could replace the Retained CBER and, even if guidelines were to exist (or be produced), they would not – by their very nature – provide the same degree of legal certainty that the CMA itself has recognised as inherent in the instrument of block exemptions,⁷ and which carriers currently enjoy under the Retained CBER. Thus, if the Retained CBER were allowed to expire, this would create an environment of legal uncertainty that would impair carriers' willingness to enter into or modify consortia and could even lead carriers to withdraw from existing consortia. This would affect UK consumers by depriving them of the efficiencies and benefits explained above that are attributable to consortia and may also affect how consortia are viewed in other jurisdictions, potentially leading to measures that undermine consortia in even more significant ways.

B. CHANGES TO THE SCOPE OR DEFINITIONS IN THE RETAINED CBER

I. Policy Question

Question 4: Does the scope of the retained CBER, set out in Article 1, require modification or updating? Please provide the evidence and reasoning behind your answer.

9. No. Article 1, which provides that the Retained CBER applies to consortia “*in so far as they provide international liner shipping services from or to one or more ports in the United Kingdom*” remains fit for purpose and well-understood in the industry. The Associations are not aware of any reason why it would be necessary or appropriate to modify or update the wording of Article 1.

Question 5: Do any of the definitions set out in Article 2 of the retained CBER require modification? Please provide the evidence and reasoning behind your answer.

10. No. Article 2, which provides definitions for “*consortium*”, “*liner shipping*”, “*transport user*”, “*commencement of the service*”, and “*the Chapter 1 prohibition*”, remains fit for purpose. The definitions provided in Article 2 are sufficiently clear and

⁷ CBER Consultation, paras. 1.6 – 1.7.

well-understood in the industry, and the Associations are not aware of any reason why it would be necessary or appropriate to modify any of those definitions.

Question 6: Does Article 3(4)(a) on the ‘use of a computerised data exchange system’ require updating? If so, how could further clarity be offered? Please provide the evidence and reasoning behind your answer.

11. No. The Associations consider that the existing reference to the “*use of a computerised data exchange system*” in Article 3(4)(a) is clear and remains fit for purpose as it is sufficiently broad to capture the ways in which the data needed for the efficient operation of a consortium are shared between its members. Modifying this language risks being overly prescriptive which could cause confusion and lead to unintended consequences. Furthermore, there is no need to clarify or update the wording to expand on the meaning of “use”: the Retained CBER already has built-in behavioural and use limitations with respect to the exchange of information between carriers: the extent of information that can be exchanged relates to the permitted activities laid down in the Retained CBER, e.g., the coordination of sailing timetables and the determination of ports of call.⁸ A potentially anticompetitive exchange of information, unrelated to the list of permitted activities, would fall outside the block exemption and remain subject to UK competition law.

Question 7: Do any other aspects of the exempted agreements set out in Article 3 of the retained CBER require updating? If so, which aspects need modification? Please provide the evidence and reasoning behind your answer.

12. No. The list of exempted activities specified in Article 3 is especially valuable to carriers, is well-understood in the industry and remains fit for purpose. The Associations are not aware of any reason why it would be necessary or appropriate to modify any aspect of Article 3.

⁸ See further, Articles 3(1)-(3), Retained CBER.

C. **HARDCORE RESTRICTIONS**

I. **Policy questions**

Question 8: Do you agree with the CMA's recommendation to retain the current hardcore restrictions in the retained CBER in any CBEO? If not, what are the reasons and evidence that would warrant a change to the current hardcore restrictions?

13. Yes. The Associations support the CMA's recommendation to retain the current hardcore restrictions.

II. **Impact Questions**

Question 9: Would retaining the current hardcore restrictions in any future CBEO present any possible issues for your business or those that you represent? Please provide the evidence and reasoning behind your answer, such as the expected costs or benefits that would accompany the current hardcore restrictions being retained in any future CBEO.

14. No. The Associations consider that the explicit listing of hardcore restrictions in the Retained CBER, and/or any future CBEO, is beneficial in two respects. First, it clearly delineates for carriers the types of conduct that should never feature in a consortium agreement. Second, it provides comfort and clarity to transport users that carriers will not engage in hardcore restrictions if they wish to benefit from the block exemption; indeed, it also sends a strong message to carriers when self-assessing consortia which exceed the market share threshold that any of the hardcore restrictions are unlikely to satisfy the conditions of individual exemption.

Question 10: How would retaining the current hardcore restrictions in the proposed CBEO impact consumers?

- a. **Significant positive impact**
- b. **Moderate positive impact**
- c. **Negligible impact**
- d. **Moderate negative impact**
- e. **Significant negative impact**

15. The Associations consider that retention of the current hardcore restrictions in the proposed CBEO will have a "*significant positive impact*" on consumers, for the reasons noted in response to Question 9 above.

D. MARKET DEFINITION AND MARKET SHARE THRESHOLDS

I. Policy Questions

Question 11: Do you agree with the CMA's proposed recommendation to retain the current market share threshold in the proposed CBEO? If not, what are the reasons and evidence that warrant a change to the market share threshold in the proposed CBEO?

16. Yes. The Associations consider that the current market share threshold of 30% remains fit for purpose. However, for the reasons explained in paragraph 18 below there could be certain benefits to increasing the current market share threshold.

Question 12: Separate to the 30% threshold, do the other conditions relating to market share set out in Article 5 remain appropriate and useful? If not, which aspects need modification? Are there any other changes that you consider should be made?

17. The Associations consider that Article 5, which specifies conditions relating to market share, is well-understood in the industry and remains fit for purpose. The Associations are not aware of any reason why it would be necessary or appropriate to modify any aspect of Article 5.

II. Impact Questions

Question 13: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was increased?

a. **Significant positive impact**

b. **Moderate positive impact**

c. **Negligible impact**

d. **Moderate negative impact**

e. **Significant negative impact**

18. Hypothetically, if the market share threshold were increased, the Associations consider that there would likely be a "*moderate positive impact*" on the operations of carriers. This is because a number of new or existing consortia are likely to exceed the current threshold, meaning that the relevant carriers must incur the additional expense and delay associated with a Self-Assessment (see para. 4 above). On that basis, an increase in the market share threshold can be expected to benefit such carriers by affording them the relative ease and simplicity of carrying out an assessment under the proposed CBEO (see para. 3 above), with benefits that flow to transport users and consumers at large (see paras. 5 and 7).

Question 14: What would be the likely impact on your business's operations or the operations of those you represent if the market share threshold was decreased?

- a. **Significant positive impact**
 - b. **Moderate positive impact**
 - c. **Negligible impact**
 - d. **Moderate negative impact**
 - e. **Significant negative impact**
19. As noted in its submission of 24 November 2022 (the “**Associations’ Paper**”), and in its responses to Questions 11 and 13 above, the Associations consider that the existing 30% market share threshold remains entirely appropriate. If the CMA were to reduce the market share threshold, this would merely reduce the benefits and relevance of the CBEO. Indeed, many of the concerns expressed in the Associations Paper, regarding the possibility of the Retained CBER not being replaced on expiry with equivalent UK legislation, would apply to those consortia that would fall out of its scope under a reduced threshold. Moreover, if the rationale for potentially reducing the threshold is based on a concern that 30% is too high to ensure healthy competition, this concern is unfounded. As explained by RBB Economics, the Retained CBER does not exempt cooperation agreements covering activities which are likely to significantly restrict competition and, in any event, the current market share cap ensures that any exempted consortium faces effective external competition.⁹

E. OTHER PROVISIONS

I. Policy Question

Question 15: Do you agree with the CMA’s proposed recommendation that the current provisions of Article 6 of the retained CBER be maintained in any future CBEO? If not, what are the reasons and evidence that would warrant a change to these provisions?

20. Yes. Article 6, regarding the right to withdraw from a consortium agreement, remains fit for purpose. The Associations are not aware of any reason why it would be necessary or appropriate to modify Article 6.

⁹ RBB Report I, pages 4, 17.

F. DURATION OF THE RETAINED CBER

I. Policy Question

Question 16: The CMA invites views from interested stakeholders on the possibility of a CBEO without a fixed expiry date.

21. The Associations support the adoption of a CBEO without a fixed expiry date. This approach would strike the optimum balance between flexibility and legal certainty: it would allow the CMA to review the CBEO as and when market developments necessitate whilst avoiding the potential uncertainties, and administrative burdens, associated with legislation that is subject to automatic expiry. Furthermore, as noted in the Consultation Document, the CMA will be required, in any event, to carry out a post-implementation review every five years following the entry into force of the CBEO. These post-implementation reviews will provide the CMA with opportunities at regular intervals to assess whether the CBEO remains fit for purpose.

II. Impact Questions

Question 17: What would be the likely impact on your business's operations or the operations of those you represent if any CBEO was not to include a fixed expiry date?

- a. **Significant positive impact**
 - b. **Moderate positive impact**
 - c. **Negligible impact**
 - d. **Moderate negative impact**
 - e. **Significant negative impact**
22. For the reasons noted in response to Question 16, the Associations consider that a CBEO without a fixed expiry date would likely have a significant positive impact on carriers.

Question 18: Please provide a short explanation highlighting your reasoning for your answer above.

23. Please refer to the reasoning provided above in response to Question 16.

G. OTHER PROVISIONS

I. Policy question

Question 19: The CMA invites views on the above proposed recommendations in respect of the other provisions in any CBEO.

24. The CMA proposes that any CBEO should impose an obligation for parties to provide the CMA with information, if requested to do so by the CMA, regarding agreements falling within the scope of the CBEO.¹⁰ Furthermore, it is proposed that parties receiving such requests will have ten working days to respond, or an extended period if agreed by the CMA, and that failure to comply with the request will result in cancellation/withdrawal of the block exemption for the party in question.¹¹
25. The Associations respectfully submit that it is unnecessary and inappropriate to propose a deadline of ten working days that would be applicable by default in all cases. The deadline for responding to information requests should be determined by the CMA on a case-by-case basis, taking into account the scope and complexity of the specific information request. In some cases, it may indeed be feasible to respond to an information request within ten working days; in others, however, that period will be manifestly too short. Indeed, the CMA itself acknowledges (by referencing the potential for an “extended period”) that a deadline of ten working days will not be feasible in some cases. Also, the fact that the penalty for non-compliance is so severe (*i.e.*, withdrawal of the benefit of the block exemption) suggests that these information requests are likely to be burdensome, thus further weighing against a default deadline of ten working days.
26. By contrast, Section 26 Competition Act 1998 (“CA98” or the “Act”)¹², which governs the issuance of information requests for the purposes of an investigation under Section 25 of the Act, does not lay down any prescribed time period for compliance. Instead, Section 26(5) CA98 provides that the CMA “*may also specify in the notice – (a) the time and place at which any document is to be produced or any information is to be provided...*”.
27. The Associations submit that, rather than referencing a ten working day deadline, the CBEO should contain a provision similar to that in Section 26(5) CA98. This would

¹⁰ CBER Consultation, para. 6.5.

¹¹ CBER Consultation, paras. 6.5-6.6.

¹² UK Competition Act 1998: <https://www.legislation.gov.uk/ukpga/1998/41/contents>

provide the CMA with the necessary flexibility to set a deadline, following the drafting of the relevant request, that is appropriate to the specific case at issue. The possibility for a party to agree an extended period for response, as proposed by the CMA, should be retained.

28. Furthermore, the Associations also submit that a period of ten working days is likely to be insufficient for companies to discuss issues of extraterritoriality with the CMA where a request for information has been issued to a company with no sufficient UK connection. Indeed, this may ultimately mean that the company in question has no *legal* obligation to respond to the information request,¹³ with the effect of curtailing the CMA's ability to impose a penalty for non-compliance.
29. Finally, the Associations note that in the final Horizontals Recommendation, the CMA acknowledges the benefits of "*giv[ing] recipients of large information requests advance notice so that they can manage their resources accordingly*".¹⁴ Equally, the CMA will also consider clarifying in the Horizontals Guidance that "*in certain circumstances and, where it is practical and appropriate to do so, it may send the information request in draft*".¹⁵
30. Those two caveats have indeed been reflected in the draft Horizontals Guidance published for consultation on 25 January 2023:

*"In appropriate cases, the CMA will seek to give recipients advance notice of information requests, and where it is practical and appropriate to do so, the CMA may send the information request in draft. The CMA can then take into account comments on the scope of the request, the actions that will be needed to respond, and the deadline by which the information must be received. The time frame for comment on the draft will depend on the particular circumstances of the case, including the nature and scope of the request."*¹⁶

31. Therefore, at a minimum, the Associations submit that a similar approach would be appropriate in the management of information requests under the CBEO.

¹³ See further in the context of notices under section 26 CA98, judgment of 8 February 2023, *Bayerische Motoren Werke AG (Appellant) and The King on the application of Volkswagen Aktiengesellschaft (Claimant) v. Competition and Markets Authority*, [2023] CAT 7, para. 79.

¹⁴ CMA Horizontals Recommendation, note 204 to para. 7.8.

¹⁵ CMA Horizontals Recommendation, note 204 to para. 7.8.

¹⁶ CMA draft Horizontals Guidance, para. 4.139.

Part II

Update on Latest Market Developments

Competition & Markets Authority Consultation on the Retained Liner Shipping Consortia Block Exemption Regulation

Submission by the Asian Shipowners Association, International Chamber of Shipping and World Shipping Council,

23 February 2023

Executive Summary

The Competition & Markets Authority (“**CMA**”) is proposing to recommend to the Secretary of State that the retained Liner Shipping Consortia Block Exemption Regulation (the “**Retained CBER**”) be replaced, upon its expiry, with a Liner Shipping Consortia Block Exemption Order (“**CBEO**”). The CMA is currently seeking views on this proposal (the “**Consultation**”). The Asian Shipowners Association (“**ASA**”), International Chamber of Shipping (“**ICS**”) and World Shipping Council (“**WSC**”) (hereafter “**the Associations**”) support the CMA’s proposal for a CBEO. The Retained CBER provides vital legal certainty for the vessel sharing arrangements entered into by shipping lines to the benefit of their customers, trade and the environment. Before publication of the consultation, WSC met with the CMA and the Associations made a subsequent submission to the CMA calling for the Retained CBER to be replaced by equivalent UK legislation with no amendment to its provisions.¹ That submission, which highlights the cost, operational and climate efficiencies generated by consortia, is supported by expert economic reports and it illustrates the Retained CBER’s role as a vital transport efficiency tool, facilitating efficient vessel sharing and generating widely shared public welfare benefits:

- a) **Consumer/pro-competitive benefits.**² UK consumers share in the benefits brought by consortia in the form of lower costs, higher service frequencies, better port coverage, and stronger price competition.

¹ See the Associations’ submission of 24 November 2022 (the “**Associations’ Paper**”).

² See Associations’ Paper, paras. 110-116.

- b) **Environmental efficiency and contribution to the Net Zero Strategy.**³ Consortia allow carriers to maximise operational efficiency through better fleet utilisation. Consortia also allow carriers to use larger containerships which result in much lower greenhouse gas emissions per container than smaller containerships.⁴
- c) **Macroeconomic benefits.**⁵ Consortia contribute to the UK's maritime strategy (Maritime 2050) and its objective of being a global leader in world trade.

In this paper, we highlight recent market data that clearly demonstrate that increased freight rates and reduced reliability during the pandemic were the product of market forces and not attributable to carriers or consortia. Rather, it was the result of surge in goods transport demand particularly from the US, labour shortages and port and hinterland congestion which removed effective capacity from the market.

As these problems unwind, freight rates have fallen and continue to fall significantly to reach pre pandemic levels, and liner shipping has resumed the deflationary role within the global economy that it has held for over two decades, by offering significantly discounted maritime transport services relative to the global consumer price index. Schedule reliability also continues to improve and an imminent return to pre-pandemic levels is expected.

The latest market data is consistent with the evidence presented in the Associations' prior submission, demonstrating the healthy state of competition in the shipping sector that has seen rates fall as conditions return rapidly to pre-pandemic norms.

How the Retained CBER Makes Consortia Better and Improves Competition

The Retained CBER facilitates the creation and operation of efficient consortia by greatly reducing the compliance burdens and costs required to establish this type of beneficial cooperation, where the involved carriers have a collective market share of no more than 30%.

By providing legal certainty in these limited circumstances, transport planners rather than lawyers are placed at the heart of consortia agreements, ensuring that transport efficiency is optimised, and market needs responded to dynamically.

There is no alternative source of UK guidance that could replace the sector-specific legal certainty provided by the Retained CBER.⁶ Non-renewal runs the risk that carriers might refrain from entering into new consortia agreements and might even withdraw from

³ See Associations' Paper, paras. 95-101.

⁴ Per twenty-foot equivalent units ("TEU"). See Associations' Paper, paras. 103-105 and Annex I to the Associations' Paper, which is a report prepared by RBB Economics ("RBB Report I"), Section 3.2, pages 11-12, in particular, Tables 4 and 5.

⁵ See Associations' Paper, paras. 37-40, 108-109.

⁶ See Associations' Paper, paras. 126-150.

existing consortia. Non-renewal may also affect how consortia are viewed in other jurisdictions potentially leading to measures that undermine consortia in even more significant ways. Such a result would be detrimental to the international ocean transportation system that supports the UK and world economies. Therefore, if consortia are worth keeping (and that conclusion has not been challenged), the Retained CBER is worth keeping.

Certain stakeholders have pointed to higher freight rates and lower reliability of liner shipping services resulting directly from the COVID pandemic and its supply chain impacts as evidence that the CBER and vessel sharing does not work. This assertion has been factually and economically proven to be incorrect, as is demonstrated below.

Latest market developments and trends highlight a competitive market

Increased freight rates and reduced reliability during the pandemic were not attributable to carriers or consortia. Instead, the CMA,⁷ the European Commission,⁸ and the US Federal Maritime Commission⁹ all concluded that these developments were caused by several other factors wholly outside the carriers' control. The Associations have also provided evidence¹⁰ that these factors were exceptional supply and demand imbalances, a surge in goods transport demand particularly from the US, labour shortages and port and hinterland congestion that removed effective (or available) capacity from the market.

These problems are now unwinding, causing reliability to increase and market conditions including freight rates to normalise rapidly. The latest market data is consistent with the evidence presented in the Associations' prior submission and should categorically end any debate as to whether consortia and/or the Retained CBER caused higher freight rates or degraded performance during the pandemic. Instead, they demonstrate the healthy state of competition in the shipping sector that has seen rates fall as conditions return rapidly to pre-pandemic norms.

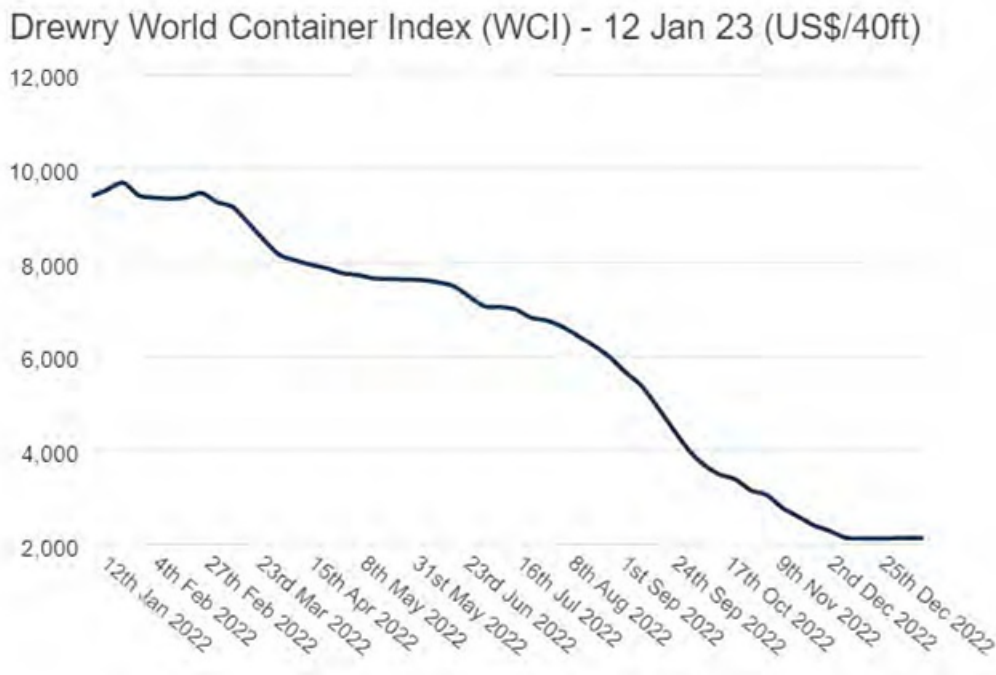
⁷ [Letter from Andrea Coscelli CBE, then Chief Executive of the CMA, to Make UK and British Chambers of Commerce, 30 November 2021](#), pages 2-3.

⁸ [Answer given by Executive Vice-President Vestager on behalf of the European Commission \(23.5.2022\)](#)

⁹ [FMC Fact Finding Investigation, Final Report "The Effects of COVID-19 on the U.S. International Ocean Transportation Supply Chain,"](#)

¹⁰ See in particular, Associations' Paper, paras. 47-57 and RBB Report I, pages 22-36.

Freight rates continue to fall significantly, and it is predicted that they will imminently return to pre-pandemic levels or below them.



The Chief Executive of Sea-Intelligence predicted correctly that:

“full normalisation [will happen] by the end of the first quarter of 2023” as a result of “sharply dropping demand combined with a significant injection of capacity due to reduced bottlenecks [and the fact that] 2023 will begin to see deliveries of the sizeable orderbook, based on orders made during 2021” .¹¹

These comments are consistent with an analysis by Lloyd’s List which notes that:

“[t]he normalisation of freight rates is happening faster than most expected. A return to pre-pandemic rate levels is almost complete on many trades [...] [one] cause for the fall in rates was that effective capacity has risen to its highest levels since the first half of 2021 due to easing congestion and the quicker pace of newbuilding deliveries” .¹²

In fact, in November 2022, Alphaliner was already reporting that the market was “*heading towards a ‘hard landing’ instead of the expected ‘normalization’*”, noting for instance that

¹¹ Lloyd’s List, *Latest container liftings data show extent of demand retreat*, 9 January 2023 (emphasis added), available [here](#).

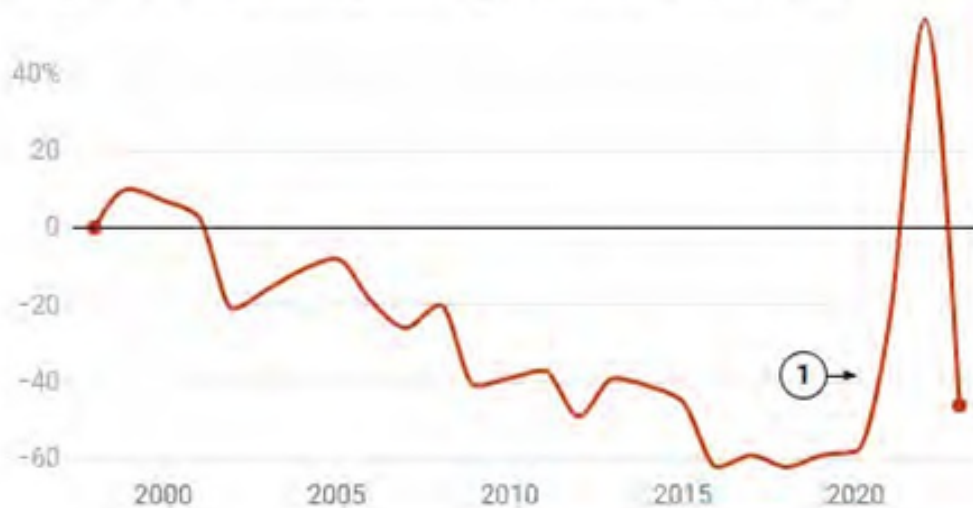
¹² Lloyd’s List, *Container spot rates close in on 2019 levels*, 21 November 2022 (emphasis added), available [here](#).

spot rates between Shanghai and North Europe had fallen 77.4% since their peak on 7 January 2022 and that rate erosions were continuing to accelerate.¹³

Shipping Watch echoed this outlook, noting that “[s]pot rates on the container market are continuing to plummet” and that “rates for Asian-Northern European routes have now fallen by 84 percent compared to levels before the Chinese New Year in January 2022”.¹⁴ These types of reports continued throughout December 2022 with Sea-Intelligence noting that “spot rate levels are poised to decline substantially, to both the Mediterranean and to the US East Coast”¹⁵ and that “[t]rade lanes which saw the largest spikes in freight rates in the past few years, are also the ones now seeing the most rapid declines”.¹⁶ According to one commentator, as of January 2023, freight rates are “in freefall” and “contracts [are] being re-negotiated”.¹⁷

Moreover, data has shown that with recent price falls liner shipping has resumed the

Freight rate discount compared to global consumer price index.



deflationary role within the global economy that it has held for over two decades, by offering significantly discounted maritime transport services relative to the global consumer price index.¹⁸

¹³ Alphaliner Weekly Newsletter, 2022-45 (02.11.2022 to 08.11.2022).

¹⁴ Shipping Watch, *Shipping analyst: Container market is experiencing a “hard landing”*, 25 November 2022, available [here](#).

¹⁵ Sea-Intelligence Sunday Spotlight, December 4, 2022 – Issue 593, *Asia to Med and USEC rates to decline*, page 18 (emphasis added).

¹⁶ Sea-Intelligence Sunday Spotlight, December 18, 2022 – Issue 595, *Regional price normalisation*, page 13.

¹⁷ Shipping Watch, *Carriers are blamed for a lot of things – but inflation should no longer be one of them*, Opinion by Lars Jensen, 6 January 2023, available [here](#).

¹⁸ Shipping Watch, *Carriers are blamed for a lot of things – but inflation should no longer be one of them*, Opinion by Lars Jensen, 6 January 2023, available [here](#).

Schedule reliability also continues to improve and, similar to the outlook for rates, an imminent return to pre-pandemic levels is predicted.

In late November 2022, Lloyd's List reported that:

*“both global schedule reliability and average delay for late vessel arrivals improved in the third quarter [of 2022]” and that “[i]n terms of the global carriers, all of them recorded a quarterly and annual improvement in schedule reliability, with nine carriers recording double-digit annual improvements”.*¹⁹

This positive trend continued in December 2022 as evidenced by two reports published by Sea-Intelligence. The first noted that:

*“Continuing reliability improvements resulted in further release of capacity, as congestion eased from a global perspective. The pace of improvement indicate reversal to normal in 2023-Q1”.*²⁰

The second report by Sea-Intelligence, published shortly thereafter, provided another in-depth analysis of schedule reliability, which concluded that:

*“On a global level, both schedule reliability and average delays are trending upwards, now in line with 2020-1H, and moving fast towards the 2019 pre-pandemic level. The same is true for the top-14 global carriers as well as the major East/West trades. [...] [Also,] looking across 184 global ports [...] 82% have a positive schedule reliability trend, which is an indication of alleviating global port congestion”.*²¹

These reports concerning rates and reliability provide a wealth of information and data confirming beyond any credible doubt the absence of a link between the market conditions witnessed during the pandemic and consortia/the Retained CBER. **(Please see annex 1 for a full list of articles attesting to these trends)**. They also attest to the healthy state of competition in the sector that has permitted rates to return to pre-pandemic levels rapidly in response to changing supply and demand. The Associations respectfully urge the CMA to take this evidence into account as part of the Consultation and in preparation of its final recommendation to the Secretary of State. The Associations remain at the CMA's disposal should it require any further information in this regard.

¹⁹ Lloyd's List, *Between the lines: Stemming the decline*, 25 November 2022, available [here](#).

²⁰ Sea-Intelligence Sunday Spotlight, December 4, 2022 – Issue 593, *Congestion is 60% resolved*, page 3 (emphasis added).

²¹ Sea-Intelligence Sunday Spotlight, December 11, 2022 – Issue 594, *Schedule reliability looking more positive*, page 12 (emphasis added).

Conclusion

For all of the above reasons, and those already submitted by the Associations and in view of the vital role that consortia play in underpinning international trade and providing cost, environmental and operational efficiency to global maritime supply chains, the Associations support the CMA's proposal to replace the Retained CBER when it expires on 25 April 2024 with a CBEO. The Associations submit that the provisions of the Retained CBER should be maintained in the CBEO without any amendments, save as to the duration of the CBEO, in relation to the Associations supports the CMA's proposal that the CBEO be of indefinite duration. The Associations would be happy to answer any questions that the CMA might have in relation to the present submission and/or the Associations' prior submission.



Annex

Selected List of Press Article detailing Recent Ocean Shipping Freight Rate Falls and Reliability Improvements

Lloyds List	9 January	Latest container liftings data show extent of demand retreat
JOC	9 January	Asia-Europe Capacity Cuts Lag Market Slowdown
Sea Intelligence	8 January	EUR imports much more reliable than NAM
Shipping Watch	6 January	Carriers are blamed for a lot of things – but inflation should no longer be one of them
Financial Times	19 December	Trade Secrets Newsletter: Much better now
Sea Intelligence	18 December	Regional price normalisation
Sea Intelligence	11 December	Schedule reliability looking more positive
Sea Intelligence	11 December	Atlantic spot rates about to collapse
Sea Intelligence	4 December	Congestion is 60% resolved
Lloyds List	28 November	Box lines face hard landing as rates continue slide
Lloyds List	25 November	Between the lines: Stemming the decline
Shipping Watch	25 November	Container market is experiencing a "hard landing"
Lloyds List	22 November	Container spot rates close in on 2019 levels
Financial Times	19 November	Supply Chain Crunch is Easing
Alphaliner	15 November	Spot ocean rates in China close to pre-pandemic levels
Alphaliner	9 November	Far East-Europe trade: 'normalization' turns into 'hard landing'
Lloyds list	16 November	Shippers ignore contract commitments amid declining rates
Sea Intelligence	30 October	Review of schedule reliability in 2022-Q3
Lloyds List	17 October	Liner shipping carriers enter another price war
Lloyds List	13 October	Capacity reductions fail to stop container rate rout
Lloyds List	12 October	Shipping rates yet to find floor as container throughput in China dips
Lloyds List	23 September	No respite for falling container spot freight rates

Lloyds List	7 September	Lower box freight rates are first sign of normalisation
Lloyds List	26 August 2022	Sharp fall in container spot rates as peak season flounders
Freight Waves	2 October	If supply chain crunch is finally easing, why is inflation so high?
Bloomberg	26 September 2022:	Weaker Demand for Chinese Goods Spells End of Shipping Boom
Alphaliner	12 October 2022	Port congestion ties up ship capacity, but not enough to stop Asia-Europe rate drop
Alphaliner	14 September	China - USWC no longer the most lucrative trade for spot cargo
Sea-Intelligence	16 October	Transpac rate drop worse than 2015 price war
Sea-Intelligence	25 September	83% of cargo is past the rate peak

Part III

Submission of 24 November 2022

COMPETITION & MARKETS AUTHORITY
EVALUATION OF THE RETAINED
LINER SHIPPING CONSORTIA BLOCK EXEMPTION REGULATION
SUBMISSION
24 November 2022
BY



**World
Shipping
Council**



**International
Chamber of Shipping**
Shaping the Future of Shipping



ASA
Asian Shipowners' Association

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Annex 1 Report by RBB Economics, 3 October 2022, *Response to the EC liner shipping CBER consultation, Prepared at the request of the World Shipping Council*

Annex 2 Report by RBB Economics, 13 October 2022, *Liner Shipping Consortia Block Exemption Regulation, An introductory note prepared at the request of the World Shipping Council*

Annex 3 Report by Charles River Associates (CRA), 4 November 2022, *Liner shipping consortia: Assessment of freight rate developments, Prepared for World Shipping Council*

I. Introduction

1. This submission is made on behalf of the World Shipping Council (“WSC”), the International Chamber of Shipping (“ICS”), and the Asian Shipowners’ Association (“ASA”) (collectively, the “Associations” to provide the Competition & Markets Authority (“CMA”) with relevant background and evidence to aid its review of the retained Liner Shipping Consortia Block Exemption Regulation (“Retained CBER”)¹ (the “CMA Evaluation”).
 - a. WSC is a trade association representing the global liner shipping industry.² Its members operate 90% of the global liner shipping capacity and transport approximately 60% of the value of global seaborne trade.
 - b. 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.³
 - c. The ASA consists of seven members from the shipowners’ associations of Asia Pacific nations: Australia, China, Hong Kong, Japan, Korea, Chinese Taipei and the Federation of ASEAN Shipowners’ Associations (“FASA”).⁴ ASA’s membership is estimated to control about 50% of the world merchant fleet.⁵
2. The Associations respectfully submit that the CMA should recommend to the Secretary of State the replacement of the Retained CBER with equivalent legislation in the UK with no amendment to any of its provisions. This is consistent with the recommendation for renewal of the EU CBER presented by the Associations to the European

¹ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), referred to in this paper as the “Retained CBER”. This regulation was retained in UK law after EU law generally ceased to have effect in the UK on 1 January 2021, as a result of a combination of the operation of the European Union (Withdrawal) Act 2018 and the Competition (Amendment etc.) (EU Exit) Regulations 2019, as amended by the Competition (Amendment etc.) (EU Exit) Regulations 2020. The equivalent instrument in the EU is Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ (2009) L 256/31, referred to in this paper as the “EU CBER”.

² For more information about WSC, please visit <https://www.worldshipping.org/>

³ For more information about ICS, please visit <https://www.ics-shipping.org/>

⁴ 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/>

⁵ For more information about ASA, please visit <https://asianshipowners.org/index.php>

Commission (the “**Commission**”) on 3 October 2022 in response to the EC’s Call for Evidence.⁶

3. To accompany the present submission, WSC has commissioned (i) an expert economic report prepared by RBB Economics (“**RBB Report I**”, attached as **Annex 1** below); (ii) an expert economic report prepared by RBB Economics in the form of an introduction to liner shipping generally, and in the context of the UK specifically (“**RBB Report II**”, attached as **Annex 2** below);⁷ and (iii) an expert economic report prepared by Charles River Associates, or “**CRA**” (“**CRA Report**”, attached as **Annex 3**), which assesses freight rate developments (together the “**Reports**”). The Reports should be regarded as integral parts of the present submission, and they will be referenced (as appropriate) throughout this document.⁸

II. Executive summary

4. In a nutshell. The Retained CBER is an essential regulatory tool that yields significant benefits to a variety of stakeholders, with no downside from a competition or consumer welfare perspective. The CMA should therefore recommend its replacement to the Secretary of State with equivalent UK legislation without amendment. Any argument to the contrary disregards the relevant empirical data and undermines the UK’s sustainability goals.
5. Space sharing agreements are universally operated by liner (i.e., scheduled) shipping companies throughout the world, on international shipping routes to and from Europe (including the UK), and within Europe (including the UK). Such arrangements, also often known as vessel sharing arrangements or “consortia” – under which shipping companies share space and combine schedules in order to achieve economies of scale and scope and reduce variable costs – have benefited from an EU block exemption since 1995. To the best of the Associations’ knowledge, the Commission has never challenged such an arrangement.

⁶ On behalf of the WSC, Baker Botts provided a copy of this submission to the CMA on 3 October 2022.

⁷ WSC provided a copy of this paper to the CMA at the meeting between the CMA and WSC on 14 October 2022, following up with a copy by email on 17 October 2022.

⁸ In the present submission, as indicated throughout, the Associations have addressed certain questions raised by the CMA during its meeting with the WSC on 14 October 2022.

6. As the Commission stated in its Executive Summary for the 2020 block exemption renewal:

“[T]here is no reason to depart from the longstanding view that consortia are an efficient way for providing and improving liner shipping services; moreover a fair share of the benefits resulting from the efficiencies are passed on to consumers. Cooperation in consortia is and will remain the mainstay of the industry.”⁹

7. Albeit in the context of its review of the retained Horizontal Block Exemption Regulations, the Commission’s sentiment is echoed in the CMA’s characterisation of the benefits of block exemptions for both industry and the CMA itself:

“Block exemptions have several benefits for businesses. First, they provide legal certainty to businesses as they enable them to know in advance how to ensure that their agreements comply with competition law. Second, they avoid placing on businesses the burden of scrutinising a large number of agreements that are likely to satisfy the requirements for exemption under section 9(1) of the Act. Third, the existence of a block exemption also ensures consistency of approach by providing a common framework for businesses to assess their horizontal agreements against the Chapter I prohibition.

Block exemptions also help to ensure that the CMA does not need to spend time scrutinising these essentially benign agreements, and so is able to concentrate its resources on other matters that are more likely to give rise to significant competition concerns. In this regard, the CMA notes that the various conditions, hardcore and excluded restrictions and other provisions contained in the current block exemptions are designed to ensure that they are unlikely to apply to agreements that may give rise to significant competition concerns.”¹⁰

⁹ Commission Staff Working Document, Executive Summary of the Evaluation of the Commission Regulation (EC) No 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), SWD(2019) 411 final, page 3 (emphasis added), available at: https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_resume_evaluation.pdf.

¹⁰ The retained Horizontal Block Exemption Regulations – R&D and specialisation agreements, CMA’s recommendation, 28 June 2022, CMA 160con (“**CMA HBERs Final Recommendation**”), paras. 3.4-3.5 (emphasis added).

8. Context of the CMA Evaluation. The CMA’s evaluation of the Retained CBER is taking place against the backdrop of an unprecedented global crisis. COVID-19 disrupted the end-to-end intermodal supply chain worldwide, creating substantial bottlenecks at marine terminals, inland warehouses and distribution centres, and in the truck, rail, and barge systems that connect ports with the hinterland. Those landside bottlenecks in turn caused back-ups of ships outside of ports, significantly reducing the effective vessel capacity even as ocean carriers deployed every available owned and chartered containership. The frustration that transport users – shippers – have understandably experienced from service delays and increased cost has been channelled towards carriers, their consortia arrangements, and the regulatory tools which facilitate such arrangements, including the Retained CBER and its EU equivalent. And yet, the relevant data shows – and regulators (including the CMA, European Commission and the US Federal Maritime Commission) accept - that the problems in the sector were not attributable to carriers or consortia, but rather several other factors wholly outside the carriers’ control. This fact must be taken as a baseline before any credible debate regarding the pros and (alleged) cons of the Retained CBER can take place.
9. Regulators have already accepted that price rises were not attributable to anti-competitive conduct. Indeed, as confirmed by the CMA itself in November 2021 in response to a joint letter from Make UK and the British Chambers of Commerce concerning the impact of the increase in shipping costs:
- “for [the CMA] to open an investigation against any business, we require evidence that businesses may be breaching competition law. While we have received multiple complaints from businesses, we have yet to obtain or find such evidence.”¹¹*
10. Pros of the Retained CBER. Consortia are vessel sharing arrangements: carriers agree to share vessel space so that they can consolidate cargo volumes to achieve higher levels of utilisation of larger, more efficient ships than they could achieve operating alone, and offer a wider range of services and port calls at higher frequency than they could operating alone. The Retained CBER facilitates the creation and operation of consortia

¹¹ Letter from Andrea Coscelli CBE, then Chief Executive of the CMA, to Make UK and British Chambers of Commerce, 30 November 2021, page 2, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038233/CM_A_letter_to_Make_UK_and_BCC.pdf.

by greatly reducing the compliance burden for carriers (including compliance costs) and by providing sector-specific legal certainty. There is no alternative source of UK guidance that could replace the Retained CBER and, as explained further below, even if guidelines were to exist (or be produced), they would not - by their very nature – provide the same degree of legal certainty that the CMA itself has recognised as inherent in the instrument of block exemptions,¹² and which carriers currently enjoy under the Retained CBER (that certainty being crucial to facilitate the creation and operation of consortia). Thus, if the Retained CBER is not replaced with equivalent UK legislation in the same or similar form, this would create an environment of legal uncertainty that would impair carriers’ willingness to enter into or modify consortia, thus depriving UK consumers of the efficiencies and benefits that consortia bring about. Accordingly, the heart of the issue is rather simple: if consortia are worth keeping, the Retained CBER is worth keeping.

11. Importance of direct calls to the UK. All other factors being equal, the most efficient shipping movement is typically the direct call, in which cargo moves from one port to another on the same ship. By contrast, every transshipment implies higher costs (unloading and re-loading onto the less efficient short-sea vessel), which directly impact the prices paid by customers, and will result in longer transit times. If the Retained CBER is not replaced with equivalent UK legislation in the same or similar form, this could cause carriers to mitigate legal risk by separating final delivery into the UK from prior transport on a consortia loop, resulting in the greater use of transshipment, with the prospect of impaired supply chains and competitiveness.
12. Consortia are overwhelmingly beneficial. By optimising the use of vessel capacity, consortia generate economies of scale and cost savings for carriers, which are shared with consumers. Consortia also improve connectivity by allowing carriers to offer a higher frequency of sailings to a greater number and greater variety of ports.
13. Just as important as the economic efficiencies that consortia create is their environmental efficiency compared to service offerings that consortia members could otherwise offer on their own. The International Maritime Organisation (“IMO”) has compiled data which confirms that larger containerships result in vastly lower CO2

¹² CMA HBERs Final Recommendation, paras. 3.4-3.5.

emissions per container transported than smaller container ships. Since consortia enable carriers to operate larger ships than they could viably operate alone, they are indispensable to the UK's fight against climate change. In that regard, the Associations would note a number of recent related governmental announcements, in particular, at this year's COP27 conference, where the UK pledged (alongside the US, Norway, and the Netherlands) to roll out green maritime links, so-called 'green shipping corridors' decarbonised from end-to-end.¹³

14. Efficiency of scale applies across all ship sizes; thus, although the largest vessels are the most efficient (and least polluting) on a per-cargo-unit basis, the emissions reductions available from using consortia to deploy more efficient vessels extend across all vessel sizes in the global fleet. Accordingly, any policy decision that would impede carriers' ability to cooperate via consortia – for instance, by removing a compliance tool which has functioned well for decades – would directly undermine the targets set out in the Government's Net Zero by 2050 strategy,¹⁴ and the opportunities available to the UK in the form of green trade.¹⁵
15. Alleged cons of the Retained CBER. Any argument that consortia dampen competition between carriers is at odds with commercial reality. Even whilst cooperating in a consortium, carriers compete vigorously with one another, especially with respect to price. Carriers also retain their individual contractual relationships with customers (thereby maintaining both the price and non-price components of their competitive offerings), and they continue to take their commercial decisions independently. This includes the freedom to offer their own services independently on the same leg of trade as the consortium. Whilst some opponents of the EU CBER (and presumably, by extension, the Retained CBER) allege that consortia facilitate a reduction of capacity, there is no evidence to support this theory. On the contrary, the relevant data shows that, during the COVID-19 crisis, carriers rapidly deployed all available capacity and

¹³ Maritime sector given green boost with major COP27 pledge, published 7 November 2022, available at: <https://www.gov.uk/government/news/maritime-sector-given-green-boost-with-major-cop27-pledge#:~:text=So%2Dcalled%20'green%20shipping%20corridors,land%2Dside%20infrastructure%20and%20vessels>.

¹⁴ Net Zero Strategy, 19 October 2021, available at: <https://www.gov.uk/government/publications/net-zero-strategy>; see further, detail on proposed updates at paragraphs 96-97 below.

¹⁵ Embracing the ocean: a Board of Trade paper, 10 March 2022, available at: <https://www.gov.uk/government/publications/board-of-trade-report-maritime/embracing-the-ocean-a-board-of-trade-paper-web-version#uk-strengths-and-opportunities>.

invested in extra capacity in an attempt to meet increased demand. For these reasons, there is simply no credible argument against the Retained CBER from a competition policy or consumer welfare perspective.

16. Impact of divergence between the UK and the EU. If the CMA were to recommend that the Retained CBER should not be replaced on expiry (or endorse the inclusion of amendments) with the EC supporting renewal, this could potentially place carriers in the unenviable position of having to navigate two previously consistent legal frameworks, subjecting them to increased (and unnecessary) compliance costs.
17. Conclusion. The UK needs consortia. Members of consortia need the Retained CBER. There are no credible arguments weighing against replacing the Retained CBER in the UK, yet there are many compelling arguments justifying equivalent UK legislation on expiry, including the need to urgently cut greenhouse gas emissions. The CMA should therefore recommend its replacement to the Secretary of State with equivalent UK legislation without amendment.

III. Context of the CMA Evaluation

18. Whilst EU Block Exemption Regulations for consortia have been continuously in place since 1995, the Commission first adopted the EU CBER – in its current form – in 2009. It was adopted for a period of five years and, since then, it has been extended twice following Commission evaluations (first in 2014 and again in 2020).¹⁶
19. Following the UK’s exit from the EU, the EU block exemption regulations that were in force under EU law at the end of the Transition Period on 31 December 2020 were

¹⁶ See Commission press release IP/14/717 of 24 June 2014, “*After a public consultation, the Commission has concluded that the exemption has worked well, providing legal certainty to agreements which bring benefits to customers and do not unduly distort competition, and that current market circumstances warrant a prolongation*”, available at https://ec.europa.eu/commission/presscorner/detail/en/IP_14_717, and Commission press release IP/20/518 of 24 March 2020, “*The evaluation has shown that despite evolutions in the market (increased consolidation, concentration, technological change, increasing size of vessels) the Consortia Block Exemption Regulation is still fit for purpose, in line with the Commission's "Better Regulation" approach to policy-making, and delivers on its objectives*”, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_518.

retained in UK law.¹⁷ The Retained CBER is due to expire on 25 April 2024 unless the Secretary of State replaces it with UK legislation on expiry.¹⁸

20. The sections below discuss recent developments that are contextually relevant for the CMA Evaluation, specifically: (i) the most recent evaluation of the EU CBER by the Commission and the reasons why the Commission extended its application until 2024; (ii) the challenges experienced in the maritime supply chain since 2020 as a result of the COVID-19 crisis; (iii) the importance of direct calls to the UK; (iv) regulatory initiatives in other jurisdictions concerning the competition law framework for consortia agreements; and (v) the UK's maritime strategy pursuant to which the Government has acknowledged the fundamental importance of trade and the UK's maritime sector to the British economy.

A. 2020 extension

21. The Commission most recently evaluated the EU CBER in 2018-2019. Following a multi-step consultation process,¹⁹ involving the receipt and assessment of feedback from many different stakeholders, including the Associations, the Commission ultimately decided in 2020 to extend the EU CBER for a period of four years. The reasoning underlying this decision was explained in a Staff Working Document (“**2019 SWD**”)²⁰ and Executive Summary,²¹ both published on 20 November 2019. To summarise at a high-level, the Commission concluded that the EU CBER:

¹⁷ As a result of a combination of the operation of the European Union (Withdrawal) Act 2018 and the Competition (Amendment etc.) (EU Exit) Regulations 2019, as amended by the Competition (Amendment etc.) (EU Exit) Regulations 2020.

¹⁸ The Retained CBER may well expire earlier than 25 April 2024 (by the end of 2023) if the proposals in the Retained EU Law (Revocation and Reform) Bill (the “**Bill**”) are implemented. From discussions with the CMA, the Associations note that the CMA is fully cognisant of the timing implications the Bill creates. Nevertheless, to the extent helpful to the CMA, the Associations would be willing to engage in further discussions on the specific implications raised by the Bill (and any subsequent amendments) for the CMA's review and the implementation by the Secretary of State of the CMA's recommendation.

¹⁹ The Commission first published, and collected feedback on an Evaluation Roadmap (Ref. Ares(2018)2422025 - 07/05/2018). It then opened a public consultation period (from 27 September 2018 to 20 December 2018) in addition to collecting stakeholder input via targeted questionnaires.

²⁰ Commission Staff Working Document, Evaluation of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), SWD(2019) 411 final, available at https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_evaluation.pdf

²¹ Commission Staff Working Document, Executive Summary of the Evaluation of the Commission Regulation (EC) No 906/2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), SWD (2019) 412 final, available at https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_resume_evaluation.pdf

- a. facilitates consortia by making Article 101 TFEU assessments easier and by providing higher legal certainty that decreases legal risk;²²
- b. reduces compliance costs for carriers;²³
- c. has not had a negative impact on competition between carriers;²⁴
- d. is merited as an exceptional sector-specific regulation due to the special features of the industry, which relies heavily on cooperation;²⁵ and
- e. offers guidance that is more appropriate to be provided at the EU level, rather than the Member State level (therefore providing “EU added value”).²⁶

22. In summing up its findings, the Commission stated the following:

“[T]here is no reason to depart from the longstanding view that consortia are an efficient way for providing and improving liner shipping services that also benefits customers. A fair share of the benefits resulting from the efficiencies is passed on to transport users [...] [the CBER] provides clearer guidance and higher level of legal certainty to consortia than would have been the case in its absence. [It therefore] [...] helps carriers to save resources [...] the reliance on cooperation that allows to rationalise services and lower costs is made more pressing in view of the global economic challenges facing the container shipping industry. Therefore [...] the market conditions [...] necessitate the existence of a sector-specific BER.”²⁷

23. Thus, in the Commission’s view, the EU CBER was – in 2019 – still an essential tool to maximise the efficiency of liner shipping for the benefit of customers. The Associations will demonstrate in the present submission that this conclusion still holds true today. Also, the Commission’s emphasis on the “*global economic challenges facing the container shipping industry*” as a justification for extending the EU CBER in 2020 applies with even greater force now, considering the severe challenges that the maritime transport industry faced – and in certain respects continues to face – as a result of the COVID-19 crisis (in addition to the immense task of combating climate change). For instance, RBB Report I demonstrates that: (i) there continues to be high levels of port congestion; and (ii) lockdowns continue to be a relevant concern (notably in Asia),

²² See 2019 SWD, Section 5.1.

²³ See 2019 SWD, Section 5.2.

²⁴ See 2019 SWD, Section 5.3.

²⁵ See 2019 SWD, Section 5.4.

²⁶ See 2019 SWD, Section 5.5.

²⁷ 2019 SWD, Section 6, page 35 (emphasis added).

impacting not only port/terminal capacity but also shipbuilding activities intended to alleviate capacity constraints.²⁸

B. COVID-19 supply chain disruption

24. The global COVID-19 crisis severely impacted the maritime supply chain. Due to a confluence of factors related to the pandemic, the reliability of liner shipping services suffered and freight rates ultimately increased materially. In Section IV.B below, we will discuss these factors in detail and demonstrate that the challenges experienced in the sector since 2020 cannot be attributed to consortia, let alone the EU CBER (or the Retained CBER).
25. Nonetheless, the disruption caused by the pandemic is pertinent when describing the context of the CMA Evaluation. This is because certain stakeholders are frustrated by carrier performance indicators (as they have already expressed in numerous commercial and political fora). Indeed, several stakeholders regard the EU CBER as ‘part of the problem’, not ‘part of the solution’, and for that reason they called upon the Commission to urgently commence its evaluation (the “**EC Evaluation**”). The Associations presume that such calls have, at least to a preliminary degree, influenced the Commission’s approach to the EC Evaluation (and certainly its pre-cursor, the 2021 fact-finding discussed below).²⁹ Since responding to the Call for Evidence, the Associations have observed how this frustration has seeped into the EC Evaluation feedback which the Commission will be required to assess, some of which the CMA has already seen. We would urge the CMA to treat these comments judiciously. Whilst miscellaneous grievances against carriers are always regrettable, they must be disentangled from the genuine competition law arguments at issue in the CMA Evaluation.

C. Importance of direct calls to the UK

26. Carriers design their networks with the services their customers demand in mind (in terms of frequency, direct accessibility, and transit times). Services to and from the UK

²⁸ RBB Report I, Section 4.2.1, page 26.

²⁹ For instance, the Commission notes in its Call for Evidence (at page 3) that it has had “*regular exchanges with stakeholders (notably shippers, freight forwarders and carriers) as well as competition and regulatory authorities in Europe, the US and other jurisdictions, on the issues faced by the sector in the last 2 years and on the outlook for the sector*”.

may be available on a string as a direct call; or via transshipment. The variety of services and capacity offered to customers is demonstrated at Table 3, RBB Report II,³⁰ which identifies that (as of September 2022) 33 different carriers operated 91 unique services calling at UK ports. The table also illustrates that consortia operate more vessels than single carriers (with the average single carrier service comprising 3 vessels, while the average consortia service comprises more than 8 vessels). That is, consortia appear to operate larger fleets, with more vessels allocated to each service on average. This implies that consortia can be expected to be in a position to offer services covering longer distances at a given frequency, and/or provide a more frequent service on the same routes, relative to individual carriers. In addition, the table indicates that the capacity of consortia vessels is significantly larger than that of individual carriers (two to four times larger). As a result, the average weekly capacity consortia bring to market is almost three times that of individual carriers.

27. Whilst the schedules of carriers are critical, the main objective is the movement of cargo to and from the ports of origin and destination that are most convenient for carriers' customers. Accordingly, all other factors being equal, the most efficient shipping movement is typically the direct call, in which cargo moves from a port of origin to a port of destination on the same ship. By contrast, every transshipment (*e.g.* of cargo shipped from Shanghai to Rotterdam, and then transhipped onto a short-sea vessel for delivery to the UK) implies higher costs (unloading in Rotterdam and re-loading onto a less efficient short-sea vessel); this directly impacts the prices paid by customers and results in longer transit times, which can impair supply chains and competitiveness. Reduced direct liner shipping services to the UK would result in the greater use of transshipment, thereby increasing costs and transit time for consumers.

D. Broader regulatory context

1. Impact of divergence between the UK and EU

28. The CMA will be aware that the EC's review of the EU CBER is ongoing. A Staff Working Document and a final outcome are expected some time next year. In their submissions, the Associations have called on the Commission to renew the EU CBER without amendment. Similarly, in this paper, the Associations respectfully submit that

³⁰ RBB Report II, page 10.

the CMA should recommend to the Secretary of State the replacement of the Retained CBER with equivalent legislation in the UK with no amendment to any of its provisions. If the CMA were, however, to recommend that the Retained CBER should not be replaced on expiry (or endorse the inclusion of amendments) with the EC supporting renewal, this could potentially place carriers in the unenviable position of having to navigate two previously consistent legal frameworks, subjecting them to increased (and unnecessary) compliance costs.

29. Hypothetically speaking, this may involve, on the one hand, a system of self-assessment in the UK and, on the other, compliance with a long-standing block exemption in the EU. The Retained CBER facilitates the creation and operation of consortia by greatly reducing the compliance burden for carriers (including compliance costs) and by providing sector-specific legal certainty. By contrast, the prospect of operating outside of a UK block exemption framework would create an environment of legal uncertainty that would impair carriers' willingness to enter into or modify consortia, thus depriving UK consumers of the efficiencies and benefits that consortia bring about. That outcome would seem directly at odds with the UK's broader political ambition of being a global leader in world trade,³¹ which "[t]he maritime sector [...] enables [...], being fundamental to [the UK's] export success, [as] a significant trading sector in its own right."³²

2. Regulatory initiatives outside the UK

30. Given the global nature of the liner shipping industry, and its multiple competition law overseers, the CMA Evaluation is only one of several reviews related to cooperation between carriers that is either forthcoming or that has taken place recently. It is critical that the CMA is aware of this broader context for two reasons.
31. First, many jurisdictions already look to the Commission (both formally and informally) for leadership and best-practice guidance as to the appropriate treatment of consortia agreements under competition law. In the context of the CMA's avowed

³¹ Embracing the ocean: a Board of Trade paper, 10 March 2022, available at: <https://www.gov.uk/government/publications/board-of-trade-report-maritime/embracing-the-ocean-a-board-of-trade-paper-web-version#uk-strengths-and-opportunities>.

³² Maritime 2050, Navigating the Future ("Maritime 2050"), Department for Transport, January 2019, para. 48, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872194/Maritime_2050_Report.pdf.

“hope and expectation that the CMA will continue to be a key member of the international competition and consumer law enforcement community”,³³ those jurisdictions will already hold the CMA in equal regard in the context of competition law enforcement and thought leadership. That sets the bar for the CMA’s first review of the treatment of consortia agreements under UK competition law. The stakes of the CMA Evaluation are therefore exceedingly high.

32. If the CMA opts to recommend that the Secretary of State does not replace the Retained CBER with equivalent UK legislation in the same or similar form, other jurisdictions might follow suit in reviewing their own exemptions or antitrust immunities for consortia. Indeed, other jurisdictions might interpret the UK’s decision to depart from established best practice in relation to the exemptions for consortia agreements – however motivated – as a signal that consortia should no longer be regarded as efficiency-enhancing and ultimately beneficial to consumer welfare (despite the evidence to the contrary). On this point, the Associations would emphasise that the competition law framework, and the approach to that framework, in the UK is markedly different from the framework and approach seen in some other jurisdictions:
- a. From a UK perspective, a decision not to replace the Retained CBER with a UK equivalent will not render consortia unlawful as a matter of law; instead, if carriers were to lose the safe harbour of the Retained CBER, they would need to carry out a self-assessment pursuant to Section 9, Competition Act 1998 (“CA98”) (which, as discussed below,³⁴ entails additional complexity and cost, to the ultimate detriment of the consumer).
 - b. In other jurisdictions, however, the loss of a block exemption (or equivalent) for consortia agreements might have more dire consequences. This would be the case in jurisdictions that do not have an equivalent to the notion of self-assessment based on a balancing of the efficiency-enhancing benefits of the arrangement against its (putative) restrictions. In those jurisdictions, the absence of a block exemption, coupled with the absence of an established self-assessment framework, would

³³ Speech: Andrea Coscelli on the CMA’s role as the UK exits the European Union, Global Competition Review Annual Antitrust Law Leaders Forum, 4 February 2017, available at: <https://www.gov.uk/government/speeches/andrea-coscelli-on-the-cmas-role-as-the-uk-exits-the-european-union>.

³⁴ See Section VII.A.

create an untenable state of risk and legal uncertainty for carriers wishing to participate in consortia. In such circumstances, it is foreseeable that carriers would refrain from entering into new consortium agreements and even withdraw from existing consortia. Naturally, given the international nature of liner shipping and the concurrent application of different legal regimes to their operation, this could also negatively impact trade to and from the UK (regardless of the level of risk based on a UK competition law self-assessment).

33. Second, with respect to reviews recently carried out in other jurisdictions, the findings of other authorities could be helpful: (i) to supplement the CMA’s fact-finding (*e.g.*, to fill-in missing information); and (ii) to stress-test arguments submitted by stakeholders, or even the CMA’s own tentative findings prior to confirming its draft or final recommendation to the Secretary of State.
34. The following jurisdictions have recently extended their Block Exemption Orders (“**BEOs**”):
 - a. **Singapore**. On 15 November 2021, the Competition and Consumer Commission of Singapore announced its decision to extend Singapore’s BEO for three years until 31 December 2024 (it was otherwise due to expire on 31 December 2021).
 - b. **Hong Kong**. On 7 July 2022, the Hong Kong Competition Commission announced its decision to renew Hong Kong’s BEO for four years until 8 August 2026 (it was otherwise due to expire on 8 August 2022).
 - c. **Israel**. On 18 September 2022, the Israeli Competition Authority announced its decision to extend Israel’s BEO for three years until 17 October 2025 (it was otherwise due to expire on 17 October 2022).
35. If the CMA decides not to replace the Retained CBER with a UK equivalent, this would, of course, place the UK on a different footing than several other important jurisdictions, including those noted above. This divergence would likely compound the increased compliance burden for carriers in the event of expiry of the Retained CBER without replacement (see, *e.g.*, paras. 120 and 122 below).

36. Finally, in addition to the above extensions/renewals, the U.S. Federal Maritime Commission (“FMC”) recently completed its Fact Finding Investigation 29 (“FF29”) concerning the effects of the COVID-19 pandemic on the U.S. international ocean supply chain.³⁵ Where appropriate, we will refer in this submission to relevant findings of the FMC in FF29.

E. UK maritime strategy: Maritime 2050

37. Maritime 2050 is a long-term strategy for the UK maritime sector and sets out a high-level vision for its future.³⁶ Its conception pre-dates the referendum on the UK’s membership of the European Union,³⁷ and sets out a “*vision for the UK [...] to be viewed globally as a top tier place to do maritime business*”.³⁸ The Government has also acknowledged the fundamental importance of trade and the UK’s maritime sector to the British economy:

*“Trade is fundamental to the UK maritime sector, which when taking wider impacts into account, supports almost 1 million jobs and contributes around £40bn to UK gross domestic product (GDP). The maritime sector both enables our global trading ambitions, being fundamental to our export success, and is a significant trading sector in its own right. This theme also explores in more detail the steps we need to take to maintain and enhance our maritime professional services success in the face of competition. [...] Competition in the maritime sector is increasing. The UK must ensure it provides an attractive business environment and offer a competitive package of measures to attract inward investment.”*³⁹

³⁵ FMC Fact Finding Investigation 29, Final Report, *Effects of the COVID-19 Pandemic on the U.S. International Ocean Supply Chain: Stakeholder Engagement and Possible Violations of 46 U.S.C. § 41102(c)*, May 31, 2022, available at <https://www.fmc.gov/wp-content/uploads/2022/06/FactFinding29FinalReport.pdf>

³⁶ Maritime 2050, *Navigating the Future (“Maritime 2050”)*, Department for Transport, January 2019, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872194/Maritime_2050_Report.pdf.

³⁷ Maritime Growth Study: keeping the UK competitive in a global market, *Moving Britain Ahead*, September 2015, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876791/maritime-growth-study-keeping-UK-competitive.pdf; see further, Maritime 2050, para. 3.

³⁸ Maritime 2050, para. 22.

³⁹ Maritime 2050, paras. 48 and 53. The importance of trade to the UK maritime sector has also been separately acknowledged by Maritime UK in its latest State of the Maritime Nation report, available at: <https://maritimeuk.org/state-of-the-maritime-nation/>.

38. In that context, the Government’s stated ambition is that the “*UK will continue to be a global shipping destination for both international deep-sea cargo movements and more regional short-sea shipping.*”⁴⁰ This goes hand in hand with a need for “*upgrades to physical infrastructure such as dredging, quays and cranes to maintain port effectiveness and ensure the UK continues to attract vessel calls on key global shipping routes.*”⁴¹
39. Maritime 2050 establishes a framework designed to harness the unique opportunities the shipping industry presents. Those opportunities are neatly summarised by the Government as follows: “*the global maritime sector remains a key enabler of international trade. Indeed, international trade at current levels is only possible thanks to the maritime sector. Other transport modes have reached the practical limits of scale, yet maritime container ships continue to respond to economic forces, having more than doubled in size within a generation.*”⁴²
40. Accordingly, if the CMA decides not to replace the Retained CBER with a UK equivalent, this would call into question the UK’s ability to continue to assume a “*leading role in the new global maritime industry*”.⁴³

IV. Key facts and developments

41. Unlike matters of policy – where opponents and proponents of the Retained CBER might disagree – certain facts that are relevant to the CMA Evaluation must serve as a common foundation for the debate. In the sections below, we address two factual aspects that are critical to the CMA’s assessment: (i) the types of cooperation between carriers, and the degree to which carriers compete whilst operating in the same consortium, and (ii) the effects of the COVID-19 crisis on the maritime supply chain.

⁴⁰ Maritime 2050, para.65.

⁴¹ *Ibid*, note 40.

⁴² Maritime 2050, para. 14.

⁴³ Maritime 2050, para. 15. The Associations would note the relevance of governmental strategy to the recommendations of the CMA. For instance, in the context of review of the UK HBEOs, the CMA “*carefully considered how any new Specialisation BEO and R&D BEO could best support the UK government’s Innovation Strategy given that R&D and specialisation agreements can be closely interlinked with innovative activity*”. Under this strategy, the UK government has committed to encouraging a significant increase in private sector investment in innovation, alongside increasing direct public expenditure on R&D to £22 billion per year. To achieve this objective, the CMA has introduced in the R&D BEO a new test relating to undertakings competing in innovation. See further, CMA HBEOs Final Recommendation, para. 3.11.

A. Cooperation between carriers

1. Types of cooperation

42. As noted in the 2019 SWD prepared by the Commission, due to the nature of the liner shipping industry (*i.e.*, a capital-intensive industry involving high fixed costs, low variable costs, and perishable services),⁴⁴ cooperation agreements between carriers are prevalent. This cooperation may take the form of: (i) slot charter agreements (“SCAs”);⁴⁵ or (ii) consortia agreements (also referred to as vessel sharing agreements “VSAs”). Consortia agreements can take different forms and can involve varying degrees of investment and integration. However, the key characteristic remains the same: two or more carriers agree to share vessel space so that they can consolidate cargo volumes; as part of this agreement, the carriers jointly decide on the ports that will be served and the sailing schedules. As described in further detail by the Commission:

*“Under a consortium, all parties provide one or more vessels and in exchange receive a number of slots across all vessels in the joint service. Each carrier's allocation of slots is determined by the total vessel capacity that they contributed. The costs of each vessel are borne by its respective owner, not the consortium. The parties to the consortium jointly decide the sailing timetable, but there is no price coordination, joint marketing, revenue sharing or, with some limited exceptions, joint purchasing”.*⁴⁶

43. The three major “alliances” (2M, THE, One) are also forms of consortia. They are merely larger consortia which operate on more than one trade (as described by the Commission, the alliances involve a “*matrix of vessel sharing agreements*”).⁴⁷

44. For an overview of consortia and individual carriers active on trades to/from Europe (including their respective shares of capacity) and a summary of the services offered on these trades, please refer to RBB Report I.⁴⁸ The overview provided by RBB strongly

⁴⁴ 2019 SWD, Section 2.2, page 6.

⁴⁵ The 2019 SWD, fn. 22, page 6, provides the following detailed explanation as to why an SCA, although a type of “cooperation agreement”, does not fall within the meaning of the term “consortia” under the EU CBER: “*Under a SCA a shipping company ("charterer") "rents" a predetermined number of container slots on a vessel of another shipping company in exchange for cash (normal slot charter) or slots on its own vessels (slot exchange). SCAs do not normally involve joint decision making concerning marketing, ports of call, schedule or the use of the same port terminals [...] With SCAs carriers only buy or exchange capacity on existing services of other carriers and do not rationalize or improve the service. They therefore are not covered by Article 2(1) of the Consortia BER. A [vessel sharing agreement] VSA can include several SCAs between the parties to the agreement [...]*”.

⁴⁶ Case M.8594 – COSCO Shipping / OOIL, para. 28 (cited at 2019 SWD, page 7, fn. 26).

⁴⁷ 2019 SWD, fn. 23, page 6.

⁴⁸ Specifically, Annexes A and B to RBB Report I, pages 37-48.

indicates that a significant number of consortia operating on trades to/from Europe are likely to fall below the applicable 30% market share threshold specified in the EU CBER and Retained CBER.

2. Competition between consortia members

45. As noted above, consortia agreements involve a certain degree of horizontal cooperation, as competing carriers agree to: (i) the capacity that will be offered by the consortium service; (ii) the schedule (timetable) of the service; and (iii) its ports of call. In Section VI below, we will explain the efficiency-enhancing and pro-competitive rationale for this cooperation. For present purposes, we would merely emphasise that – as a factual matter – the existence of a consortium agreement does not negatively impact the following parameters of competition.

a. **Price.** Consortia members compete with one another to sell their allocated capacity on the vessels that are used to operate the joint service. In that regard, each consortium member sets its own price, independent of the pricing strategies of other members (as the Commission has confirmed in its merger decisional practice).⁴⁹ As discussed in RBB Report I, members are not compensated for unused capacity on the consortium vessels; therefore, they have a strong incentive to compete on price to maximise their capacity utilisation⁵⁰ (see also the enhanced price competition explained at para. 115 below).

b. **Customer relationships.** The nature of consortia is such that a customer's cargo might be transported on a vessel owned and operated by a carrier other than the

⁴⁹ See, e.g., Case M.7268 – CSAV/ HGV/ KÜHNE MARITIME/ HAPAG-LLOYD AG, paras. 65-66: “A majority of respondents to the market test have indicated that price competition does exist, and not only among consortia, but also among consortium members. Customers stated that they often invite shipping companies belonging to the same consortium to negotiate or bid for their business, because even though they belong to the same consortium they charge different rates [...] Moreover, customers [...] confirmed that they often source their requirements for container liner shipping services from multiple shipping companies (often more than four different shipping companies), irrespective of their consortia membership, thus benefitting from price competition within one and the same consortium (emphasis added). See also Case M.8120 – Hapag-Lloyd /United Arab Shipping Company, para 42: “the results of market investigation show that there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members. Shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price and customer service. Moreover, most customers who responded to the market investigation submit that membership in consortia/alliances does not count among the most important criteria in the choice of supplier of container liner shipping services. Most customers who responded to the market investigation claim that they often or even always invite different shipping companies belonging to the same consortium/alliance on a certain leg of trade to bid for a contract on that leg of trade” (emphasis added).

⁵⁰ RBB Report I, Section 2, page 5, and Section 3.2, page 14.

carrier with whom the customer has contracted. This does not mean, however, that there is a change in the contractual or service relationship from the customer's perspective. Customers continue to deal with the carrier with whom they have contracted, irrespective of the logistics of how the cargo travels from A to B. Carriers therefore have strong incentives to compete on the non-price components of their offerings, for instance, customer service, administrative convenience, payment arrangements, *etc.*

c. **Independent service offerings.** The fact that a consortium agreement exists between carriers for a particular service does not preclude those carriers from offering their own services independently on the same leg of trade.

46. In summary, with the exception of certain limited parameters of competition, consortia members continue to compete vigorously in all respects and take their commercial decisions independently. Furthermore, consortia actually increase competition between carriers. This is because, by lowering barriers to entry and increasing the number, range and frequency of services they can offer, consortia allow more carriers (whatever their size) to compete on more legs of trade than would be the case in the absence of consortia.

B. Effects of COVID-19 on the maritime supply chain

47. In response to questions from Members of the European Parliament (“MEPs”) concerning maritime supply chain disruption, the Commission has already confirmed that the problems in the sector are not attributable to carriers or consortia, but rather several other factors, such as congestion and imbalances between supply and demand:

“The monitoring of the sector has not identified any anti-competitive behaviour from alliances aimed at increasing freight rates. This view was shared also by the United States and China regulatory authorities at the Maritime Summit of September 2021. In this context, it does not seem that regulatory intervention could substitute market mechanisms in sorting out the current congestion problems in logistic chains and imbalances between demand and supply in the maritime transport sector.”⁵¹

“The Commission has been closely monitoring the container shipping industry [...] No anti-competitive behaviour from alliances has been identified at this stage. Causes of price increases and services issues are multi-faceted, and not similar

⁵¹ Answer given by Executive Vice-President Vestager on behalf of the European Commission to Parliamentary question – E-000184/2022(ASW), 22 March 2022 (emphasis added).

across the world. Changing consumption patterns, port congestion, asymmetric recoveries of world economies and unavailability of workers, threw out of balance a delicately optimised business, with little margin to absorb shocks. Russia's invasion of Ukraine may add new challenges ahead. Regulatory intervention would not appear to be able to substitute market mechanisms in resolving current issues in logistic chains."⁵²

48. The above responses from the Commission are consistent with the findings of the FMC in FF29. The FMC found that price increases were "*exacerbated by the pandemic, an unexpected and unprecedented surge in consumer spending, particularly in the United States, and supply chain congestion, and are the product of the market forces of supply and demand*".⁵³ The FMC explained the situation as follows:

"As people stayed home and governments imposed lockdowns and restrictions, consumer spending on goods, particularly through e-commerce, rather than services, surged in the fall of 2020. This increased demand overwhelmed limited supply, which was further affected by other COVID-19 impacts, such as government restrictions and decreased workforces because of illness. Supply chain congestion globally further decreased the available supply of ship capacity and container availability for exporters and importers.

Even as COVID-19 cases dropped, vaccines became available, and the impact of the pandemic was less pronounced at ports and with supply chain actors, the supply remained outmatched by the demand."⁵⁴

49. Similarly, the CMA concluded in November 2021 that there was no evidence sufficient to warrant a competition law investigation into the causes of increases in shipping costs. The CMA explained that it would continue to look for actionable information, but to date has not launched any related investigation:

"...the CMA is open to investigating evidence of anti-competitive or cartel practices in markets like these where they affect UK companies. Where we find breaches of competition law, we can impose significant financial penalties and apply for director disqualifications. However, for us to open an investigation against any business, we require evidence that businesses may be breaching competition law. While we have received multiple complaints from businesses, we have yet to obtain or find such evidence. Rest assured that we continue to

⁵² Answer given by Executive Vice-President Vestager on behalf of the European Commission to Parliamentary question – P-001454/2022(ASW), 23 May 2022 (emphasis added).

⁵³ See FF29, page 6 (emphasis added).

⁵⁴ FF29, pages 41-42 (emphasis added).

look for evidence of potential breaches and should we find or receive actionable information, we will not hesitate in taking appropriate action.

[...]

Based on the information we have, and subject to our ongoing assessment of available intelligence, our current view is that the price rises in shipping are the product of multiple factors, often international in nature and not able to be addressed unilaterally by the CMA... ”⁵⁵

50. The findings of the CMA, Commission and the FMC referenced above undermine any suggestion that consortia, or the competition law regulatory framework for consortia (e.g., the EU CBER or the Retained CBER), were to blame (or even partly to blame) for the increased prices and service deterioration witnessed during the pandemic. On this point, the Associations would note that the International Transport Forum (“ITF”) published a report in July 2022, titled “*Performance of Maritime Logistics*” (“**ITF Report**”),⁵⁶ which contained certain misguided and inaccurate claims. Specifically, the ITF Report claimed that “*a supportive legal framework*” for cooperation agreements between carriers “*facilitated the rise of ocean freight rates*” by allowing carriers to withdraw vessel capacity.⁵⁷ This claim is directly contradicted by: (i) the available evidence, in particular relevant data from Sea Intelligence presented in RBB Report I,⁵⁸ (ii) the econometric analysis on the causes of freight rate increases during the COVID period contained in the CRA report (see Section V.E below) and (iii) the FMC’s findings that “*individual ocean carriers within each alliance continue to compete on*

⁵⁵ Letter from Andrea Coscelli CBE, then Chief Executive of the CMA, to Make UK and British Chambers of Commerce, 30 November 2021, pages 2-3, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038233/CM_A_letter_to_Make_UK_and_BCC.pdf. By contrast, the CMA’s COVID-19 Taskforce investigated several complaints of unjustifiable price rises in other industries, taking “*a number of steps to prevent and address such practices [including] writing to 277 traders that have collectively been the subject of over 4,600 complaints – over 40% of the total number of actionable complaints received about price rises; opening investigations into suspected breaches of competition law by four pharmacies and convenience stores; [and] working with trade associations, regulators and other bodies to clarify expectations and warn about the potential consequences of charging unjustifiably high prices*” (Update on the work of the CMA’s Taskforce, 3 July 2020, Section 2, available at <https://www.gov.uk/government/publications/cma-coronavirus-taskforce-update-3-july-2020/update-on-the-work-of-the-cmas-taskforce>).

⁵⁶ Available at <https://www.itf-oecd.org/performance-maritime-logistics>

⁵⁷ ITF Report, page 44.

⁵⁸ See RBB Report I, Section 4.2.1, pages 24-25, Figure 3: *Absorption of global fleet due to delays, April 2011 to April 2022*, based on data from Sea Intelligence.

pricing and marketing independently and vigorously”⁵⁹ and “*reduced service by ocean carriers was driven by port congestion rather than a desire to reduce capacity*”.⁶⁰ The inconsistencies between the above claims in the ITF Report and the findings of the FMC are particularly important, considering that the ITF Report acknowledges that the FMC is one of the most rigorous overseers of cooperation between carriers (the ITF Report notes that the FMC has “*extensive responsibilities for the review and monitoring of shipping rates, including confidential service contracts, rates and rules of government-owned or controlled carriers, and agreements between carriers and terminal operators*”).⁶¹

51. Despite the findings and evidence noted above (*i.e.*, that the problems experienced during the pandemic were not attributable to carriers or consortia), RBB Report I further examines these issues in detail.⁶² Specifically, RBB Report I: (i) explores the various ways in which COVID-19 impacted the liner shipping industry, ultimately resulting in significant logistical delays and rising prices; and (ii) demonstrates that those adverse outcomes did not arise because, nor were they exacerbated by, the existence of consortia, let alone the CBER.⁶³ We briefly summarise RBB’s analysis below, but trust that the CMA will review the full analysis, which includes a presentation of the relevant underlying data, at Section 4 of RBB Report I.⁶⁴
52. **Supply side shocks.** COVID-19 caused labour shortages and led governments to impose lockdowns and other operational restrictions. This significantly impacted the port system, as: (i) many ports/terminals were closed, required to operate at reduced capacity, or were operating under strict limits as to the number of employees and volume of cargo; (ii) certain ports suffered COVID outbreaks amongst dockworkers, leading to lengthy increases in vessel waiting times; and (iii) port congestion was generally exacerbated by an insufficient number of truck drivers to move containers inland. As a result of these factors, a significant proportion of total shipping fleet

⁵⁹ FF29, page 44.

⁶⁰ FF29, page 43.

⁶¹ ITF Report, page 45. This is consistent with the FMC’s comments at FF29, page 43: “*Agreements that may pose competitive concerns are subject to continuous monitoring by Commission staff*”.

⁶² This is because the Call for Evidence references the “*challenges posed by the COVID-19 pandemic*” and, as noted, this topic is likely to feature in the feedback submitted to the Commission (see above at para. 25).

⁶³ See RBB Report I, Section 4, pages 22-36.

⁶⁴ RBB Report I, pages 22-36.

capacity was “absorbed” (*i.e.*, effectively removed from the market) due to port delays and inland transportation delays.⁶⁵ These port and inland delays, which were external forces beyond the control of carriers, also impacted the availability of shipping containers, as many containers were simply “in the wrong place at the wrong time”, thus further worsening delays.⁶⁶ Indeed, as the CRA Report confirms, since mid-2020, the capacity absorption share stopped fluctuating at around 3% and increased to more than 16% in January 2022. Since then, lost capacity has started to decline again. CRA found no evidence that this trend is in any way related to consortia presence – whereas it is consistent with COVID-induced disruptions such as port congestion.⁶⁷

53. **Demand side shocks.** At the beginning of the pandemic, the demand for liner shipping services decreased due to a drop in consumer purchasing and a reduction in output by manufacturers. However, during the second half of 2020, demand surged due to a diversion of consumer spending away from the service industry (*e.g.*, hospitality and leisure, which were closed for extended periods) and towards manufactured goods, many categories of which are primarily produced in Asia (*e.g.*, games and sports equipment, electronics, *etc.*). This surge in demand (which exceeded pre-COVID levels) was unexpected and the scope for an effective supply side response was limited due to the supply side shocks explained above.⁶⁸
54. **Supply side response.** RBB explains that, in response to the capacity absorption and increased demand, carriers made every possible effort to increase their capacity. The relevant data shows, for instance, that in July 2021, total capacity on the East Asia-Europe route was 20% higher than the same time in 2020 (while total capacity on the East Asia-North America route was 31% higher).⁶⁹ The data also shows: (i) a massive

⁶⁵ See in particular RBB Report I, Section 4.2.1, page 25, Figure 3: *Absorption of global fleet due to delays, April 2011 to April 2022*, based on data from Sea Intelligence. See further, CRA Report, Section 3.4.

⁶⁶ As described in a working paper published by the International Monetary Fund (IMF) in February 2022: “*The higher demand for transportation had to be accommodated with a mostly fixed stock of containers, ships, trucks, and storage facilities in the short run. In fact, though the number of containers in service has risen since late 2020, the effective supply of containers has been severely hampered by bouts of lockdowns and interrupted port operations, with many containers initially stranded off their usual routes. Industry experts estimate the effective stock of containers to be 10–15 percent below capacity (due to waiting times at ports)*”. IMF, *Supply Bottlenecks: Where, Why, How Much, and What Next?* WP/22/31, page 30, available at <https://www.imf.org/en/Publications/WP/Issues/2022/02/15/Supply-Bottlenecks-Where-Why-How-Much-and-What-Next-513188>

⁶⁷ See CRA Report, Section 3.4.2, pages 16-17.

⁶⁸ See CRA Report, Section 3.3, pages 12-15.

⁶⁹ See RBB Report I, Section 4.3.2, page 32.

reduction in the number of idle vessels between 2020 and 2021; and (ii) that a number of carriers (that are consortium members) started to make significant investments in new (and large) vessels during the second half of 2020 (with such vessels expected to be delivered in 2023 and 2024).⁷⁰ In other words, in an attempt to meet the increased demand, carriers rapidly deployed all available capacity and invested in extra capacity.

55. **Impact of the supply and demand shocks on market trends.** The supply side shocks discussed above led to a reduction in available capacity and/or a direct increase in carriers' costs. This resulted in freight rates being driven upwards (as would be expected). The surge in demand similarly placed upward pressure on prices, at a time when a commensurate supply-side response (*i.e.*, an expansion in capacity) was impossible. In addition to the impact on prices, service quality also suffered in the sense that cargo was delayed and there was a reduction in frequency and reliability. As RBB explains, all of these developments are consistent with what would be expected in response to the supply and demand shocks discussed above.⁷¹ As an ongoing contributing factor, RBB also notes the fallout of Russia's invasion of Ukraine, especially the resulting energy crisis (which has, for instance, doubled fuel costs for carriers) and the cost-of-living crisis (which has, for instance, resulted in strike action at certain ports).⁷²
56. **Role of consortia during the pandemic.** RBB's analysis demonstrates that: the role played by consortia throughout the period of supply and demand shocks discussed above was at worst neutral; and, in fact, consortia may have mitigated the effects of the market shocks. On the latter point, RBB confirms that there is no indication that the existence of consortia led to worse outcomes for customers than would have arisen in the absence of consortia;⁷³ on the contrary, the efficiencies associated with consortia (discussed further below) likely enhanced their ability to cope with the disruptions to the industry.
57. These findings are further supported by the conclusions in the CRA Report, see further, Section V.E below. In brief, CRA finds that the presence of consortia on routes does

⁷⁰ See RBB Report I, Section 4.3.2, pages 31-33, in particular Figure 9.

⁷¹ RBB Report I, Section 4.3.1, page 31.

⁷² RBB Report I, Section 4.2.3, pages 29-30.

⁷³ RBB Report I, Section 4.3.2, page 31.

not appear to have played a role in freight rate increases.⁷⁴ CRA ultimately concludes that, based on the evidence, freight rates increased primarily due to external factors such as increased bunker costs and the effects of the pandemic, notably increased demand, and reduced effective capacity relative to demand.

V. Industry characteristics and trends

58. In the section that follows, the Associations will address topics that concern the functioning, and competitiveness, of the liner shipping industry and consortia, namely: (i) market concentration; (ii) cross-consortia membership; (iii) the notion that consortia might operate as a barrier to entry; (iv) the impact of consortia on prices; and (v) vertical integration. Certain of these themes emerged in discussion with the CMA on 14 October 2022, as indicated below. In addressing these topics, the Associations will also address comments submitted by stakeholders to the Commission’s Call for Evidence (the “**Feedback**”), which may assist the CMA in its own evaluation.

A. Market concentration

59. Since the Commission last prolonged the CBER in 2020, there has not been a material change in concentration in the liner shipping industry, as evidenced by the following.

60. First, based on global capacity share/ Herfindahl-Hirschman Index (“**HHI**”) data, compiled and presented by RBB Economics (“**RBB**”) in the table below, concentration levels have remained stable throughout the period 2018-2022.

Table 1

Period	Share			Number of carriers			HHI
	Top 10	Top 5	Top 3	Above 10%	Above 5%	Above 1%	
Nov 2018	85.6%	66.4%	46.6%	4	7	12	1051
Mar 2019	85.6%	66.3%	46.6%	4	7	12	1046
Oct 2022	85.9%	65.7%	47.5%	4	7	12	1043

Source: Alphaliner Top 100 database, 26 October 2022⁷⁵

⁷⁴ CRA Report, para. 16.

⁷⁵ **RBB Explanatory Note:** Table 1 illustrates the global concentration measures for the top 100 carriers in November 2018, March 2019 and October 2022. Since the data only provides capacities for the top 100 carriers in the market, it does not allow for the identification of new entry or exit on the market. Also, RBB estimates that the top 100 carriers represent 98.5% of total capacity in 2022, meaning that the concentration figures provided in Table 1 slightly overstate the actual concentration.

61. Second, the Commission has not issued a single merger decision since the prior evaluation which concerned (i) a concentration between two or more carriers that (ii) involved any material overlap (*i.e.*, horizontally affected markets) in deep-sea or short-sea container liner shipping services. To the best knowledge of the Associations, the most recent such decision was issued on 22 October 2018.⁷⁶ Equally, the Associations understand that following Brexit, the CMA has not yet had occasion to evaluate container liner shipping markets in a merger context. At least one stakeholder which is opposed to a renewal of the CBER, the Global Shippers Forum (“**GSF**”), has acknowledged that “[*t*]he container shipping market has experienced very little consolidation since 2020 [...] The structure and composition of the three global shipping alliances has remained stable [...] [and] the stability of the liner shipping sector is notable compared to the consolidation and restructuring that has taken place in other global industries”.⁷⁷
62. Accordingly, if faced with similar claims of an increase in concentration, the CMA should keep in mind that such claims do not correspond with market realities.⁷⁸ Whilst such claims may have been understandable during the prior Commission evaluation (due to certain mergers and acquisitions which took place during the period 2014-2017),⁷⁹ they are unfounded with respect to the current EC Evaluation, and are equally of no relevance to the CMA Evaluation. Whilst the legal relevance of the alleged increase in concentration to the review of the EU CBER is not clearly articulated, it cannot in any event serve as a reason for non-renewal.

⁷⁶ Case M.9016 - *CMA CGM / CONTAINER FINANCE*, which involved the acquisition by CMA CGM of Container Finance (and thereby its subsidiary Containerships, which provided short-sea container shipping services). The Associations note that the Commission issued a decision earlier this year in Case M.10559 - *A P MOELLER-MAERSK / SENATOR INTERNATIONAL* (29 March 2022). However, that decision did not involve horizontal overlaps for deep-sea or short-sea container liner shipping services.

⁷⁷ GSF submission, page 15 (emphasis added).

⁷⁸ See, *e.g.*, submissions made by the German Federal Competition Authority (Bundeskartellamt), the European Association for Forwarding, Transport, Logistics and Customs Services (“**CLECAT**”), the Italian Federation of International Freight Forwarding Companies (“**FEDESPEDI**”), the Netherlands Association for Forwarding and Logistics (“**Fenex**”), FoodDrinkEurope (an organisation representing Europe’s food and drink industry), the Hamburg Exporters' Association (“**Verein Hamburger Exporteure**”), and the Italian Federation of Transport Workers (“**FILT-CGIL**”).

⁷⁹ 2019 SWD, page 12, which references six Commission merger decisions involving carriers, all of which were issued between 2014-2017. Available at https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_evaluation.pdf

63. The Associations would also use the present opportunity to respond to a claim, in which the CMA has expressed interest,⁸⁰ concerning market concentration, included in a July 2022 report of the International Transport Forum (“ITF”) (“ITF Report”).⁸¹ According to the authors of the ITF report, the well-established methodology for measuring concentration – the HHI – is not fit for purpose vis-à-vis container shipping. They claim that a so-called modified HHI (“MHHI”) should be used instead to take account of the “*cross-company ownership in competing companies*”.⁸² This proposal should be rejected for several reasons.
64. First, the suggestion to apply an MHHI is based on a fundamentally false premise, namely that consortium agreements create a situation of “common ownership”. Situations where competing undertakings own stakes in one another can (in certain circumstances) be theoretically problematic because there might be a dampening of competition. The theory is presumably that any loss of business by Company A in favour of Company B is partially compensated by Company A’s right, as a shareholder, to share in the profits of Company B. However, consortia do not entail, and cannot be equated with, one carrier obtaining a stake in another (such that the former shares in the profits of the latter). Consortia members are not compensated for unused slots, and hence have a strong incentive to compete with one another to maximise the utilisation of their allocated capacity in the vessel. Thus, the very notion of applying the MHHI to determine concentration in the liner shipping sector is flawed. As explained above, by reference to the Commission’s merger decisional practice, there is vigorous price competition between consortium members.⁸³
65. Second, the way in which the ITF Report characterises the relationship between consortia and market concentration is directly at odds with the findings of the U.S. Federal Maritime Commission (“FMC”) in its Fact Finding Investigation 29 (“FF29”).⁸⁴ The FMC specifically addressed this notion and explained that “market

⁸⁰ During its meeting with the WSC on 14 October 2022.

⁸¹ ITF, *Performance of Maritime Logistics*, available at <https://www.itf-oecd.org/performance-maritime-logistics>

⁸² ITF Report, page 33.

⁸³ See further, para. 45.a above.

⁸⁴ FMC Fact Finding Investigation 29, Final Report, *Effects of the COVID-19 Pandemic on the U.S. International Ocean Supply Chain: Stakeholder Engagement and Possible Violations of 46 U.S.C. § 41102(c)*, May 31, 2022, available at <https://www.fmc.gov/wp-content/uploads/2022/06/FactFinding29FinalReport.pdf>.

*concentration results from mergers, not from the market effects of collaborative agreements among competitors”.*⁸⁵

66. Third, the authors of the ITF Report (Olaf Merk of the ITF and Antonella Teodoro of MDS Transmodal) do not cite any third-party sources to support the appropriateness of applying the MHHI to liner shipping. Instead, the authors cite themselves, as illustrated in the following passage:

*“Consortia could be thus be [sic] seen as joint ventures of two or more container carriers that pool ships to provide a jointly operated shipping service (Merk and Teodoro, 2022) [...] O’Brien and Salop (2000) generalised this modification, while Merk and Teodoro (2022) applied the MHHI to container shipping. Their analysis shows the increased relevance of consortia when determining industry market concentration of liner shipping.”*⁸⁶

67. Finally, the Feedback reveals that certain stakeholders (not only those in favour of CBER renewal) would fundamentally disagree with the notion that consortia entail common ownership amongst carriers. For instance, the European Sea Ports Organisation (“**ESPO**”) has submitted that *“alliances are to be considered as a preferred alternative to further consolidation in the sector”*.⁸⁷

B. Cross-consortia membership

68. Certain stakeholders that oppose EU CBER renewal – most notably the German Federal Competition Authority, Bundeskartellamt (“**BKartA**”)⁸⁸ and CLECAT⁸⁹ – consider that the EU CBER is no longer fit for purpose due to (*inter alia*) the number of “cross-alliance consortia”. According to these stakeholders, cross-consortia membership results in a *“thicket of cooperation agreements”*⁹⁰ which is problematic because the *“CBER evaluates each vessel sharing agreement (VSA) route-by-route and remains*

⁸⁵ FF29, page 42 (emphasis added).

⁸⁶ ITF Report, pages 32-33 (emphasis added). We also note that the wording here is potentially misleading, as the Authors refer to themselves at one point in the third person (*i.e.*, “*Their analysis...*”).

⁸⁷ ESPO submission, page 1 (emphasis added), available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13519-EU-competition-law-evaluation-of-the-Consortia-Block-Exemption-Regulation/F3347036_en.

⁸⁸ The BKartA submission is available here https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13519-EU-competition-law-evaluation-of-the-Consortia-Block-Exemption-Regulation/F3346713_en.

⁸⁹ The CLECAT submission is available here https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13519-EU-competition-law-evaluation-of-the-Consortia-Block-Exemption-Regulation/F3347063_en.

⁹⁰ BKartA submission, pages 1 and 2.

agnostic towards cooperation agreements on other routes”⁹¹ whereas the “*cumulative effect of consortia and alliances should be taken into account*”.⁹² CLECAT argues that the “*proliferation of cross-memberships between consortia*” has resulted in reduced competition.⁹³

69. The above claims related to cross-consortia membership are flawed for the following reasons, which are equally relevant to the CMA Evaluation.

70. First, under Article 5(2) of the Retained CBER and EU CBER, the market share of a consortium member is established by calculating the “*total volumes of goods carried by [that member] in the relevant market [...] irrespective of whether those volumes are carried: (a) within the consortium in question; (b) within another consortium to which the member is a party; or (c) outside a consortium on the member’s own or on third party vessels*”.⁹⁴ Thus, the market share methodology prescribed in the EU CBER already takes into account cross-consortia membership in the relevant market at issue. The insinuation that a carrier’s membership of a consortium in one relevant market has a negative impact on the functioning of competition in another relevant market should be rejected. To the extent that CLECAT has attempted to articulate its argument in this context, its claims are vague, unsupported by evidence and devoid of any credible competition law theory of harm.⁹⁵ Furthermore, whilst CLECAT seeks to rely on the ITF Report to support its arguments,⁹⁶ that reliance is misplaced for the reasons explained above at paras. 64-66.

71. Second, the participation by carriers in multiple consortia is not a recent phenomenon, but rather a long-standing feature of the liner shipping industry. In other words, this is not a new development which has occurred since the Commission’s prior evaluation of the EU CBER. The stakeholders referenced above have not explained why the existence of cross-consortia membership would weigh against a renewal of the EU

⁹¹ BKartA submission, page 1.

⁹² CLECAT submission, page 1.

⁹³ CLECAT submission, page 8.

⁹⁴ EU CBER and Retained CBER, Article 5(2) (emphasis added).

⁹⁵ CLECAT merely claims that “*consortia between carriers from different alliances create links between the three global alliances, which reduce competition even further. The interlinkages between consortia ultimately enable a few large carriers to gain vast market power and influence vessel capacity in a way that best suits their business objectives*”, CLECAT submission, page 8 (emphasis added).

⁹⁶ CLECAT submission, fn. 14.

CBER in the current EC Evaluation when no such issues were identified during the prior evaluation (even though the Commission was clearly aware, at that time, of the “*complex network of cross-membership between consortia*”).⁹⁷

C. Consortia are not a barrier to entry

72. In both the present submission and during the meeting with the CMA on 14 October 2022, the Associations have articulated the numerous efficiency benefits associated with consortia, such as the ability of carriers: (i) to offer services at lower costs; (ii) to offer a higher frequency of sailings; and (iii) to reach a greater number and greater variety of ports.⁹⁸ In light of those benefits, the CMA might be inclined to examine, as part of its evaluation, the possibility that consortia constitute a barrier to entry;⁹⁹ in other words, the theory that membership in a consortium is a pre-requisite to enter and compete effectively on a given trade or that the prevalence of consortia might somehow otherwise impede entry by smaller carriers. The Associations would urge the CMA to dismiss such theories on two grounds.
73. First, in RBB Report I, RBB has demonstrated that, during the period 2021-2022, at least seven carriers successfully entered Transpacific, Asia-Europe and even intra Europe trades.¹⁰⁰ These carriers established their presence in the relevant markets by offering independent services; thus, their entry was not dependent on joining existing, or establishing new, consortia.
74. Second, far from constituting an entry barrier for smaller carriers, consortia in fact facilitate entry by allowing smaller carriers to enter markets that they otherwise might not be able to enter, due to insufficient assets. The Commission recognised this in 2019, finding that “*consortia allow their members to pool their vessels together and provide services [...] that carriers would not be able to provide on their own means*”.¹⁰¹ Thus, to the extent that barriers to entry exist for the provision of liner shipping services, it is the assets and resources required to operate a regular scheduled service that constitute a potential barrier whilst the option of participating in a consortium is a means to

⁹⁷ 2019 SWD, fn. 79.

⁹⁸ See further, paras. 111-114 below.

⁹⁹ The Associations note the question raised by the CMA on barriers to entry during the meeting of 14 October 2022 with the WSC.

¹⁰⁰ See RBB Report I, pages 19-20, in particular Table 8.

¹⁰¹ 2019 SWD, Section 5.3.4, page 27 (emphasis added).

overcome that potential barrier. If carriers were discouraged from participating in consortia by the expiry of the Retained CBER without replacement in the UK, this would significantly increase barriers to entry and undermine the economies of scale and scope that consortia enable carriers to achieve.

D. Vertical integration

75. The Associations respectfully submit that the topic of vertical integration is not relevant to the CMA Evaluation. The Retained CBER concerns horizontal cooperation between carriers, including the joint use or purchase of certain downstream services covered by Article 3 of the Retained CBER, but such activities are clearly distinct from investments that may be made by individual carriers to acquire (or partly acquire) elements of the maritime supply chain, which are clearly not covered by Article 3.
76. To the extent that concerns exist regarding vertical integration (if any) by carriers that belong to consortia, the Retained CBER is not a relevant instrument in the CMA's toolkit to address such concerns. The UK's merger control regime allows the CMA to assess the potential for the creation of market power and the risk of foreclosure in the supply chain resulting from vertical integration; and the general competition rules under Chapters I and II CA98 applies to the potential abuse of such market power and restrictive arrangements with customers or suppliers; but such issues have no bearing on the evaluation of consortia or the utility of the Retained CBER. Accordingly, issues related to vertical integration should not feature in the analysis underpinning the CMA's recommendation to the Secretary of State (or the Secretary of State's decision-making on the Retained CBER).
77. Numerous stakeholders have, however, claimed that the EU CBER should not be renewed due to (*inter alia*) the degree of vertical integration between carriers and other elements of the maritime supply chain.¹⁰² On this point, the Associations would draw the CMA's attention to the recent comments of freight forwarders on the topic of vertical integration by carriers:

¹⁰² See submissions made by: CLECAT, FEDESPEDI, the Finnish Freight Forwarding and Logistics Association ("FIFFLA"), Fenex, the European Barge Union ("EBU"), the South East European Freight Forwarders Association ("SEEFF") Lüders & Stange KG, the Italian Union of Transport and Services Workers ("ULTRASPORTI"), the European Transport Workers' Federation ("ETF"), Estonian Seamen's Independent Union, Vereinte Dienstleistungsgewerkschaft ("ver.di"), National Section of Port Workers NSZZ Solidarność.

- a. The Chief Financial Officer of the global transport and logistics company Kuehne + Nagel was quoted as saying “*I do not see any effect coming from the vertical integration in some of our liner competitors at this point*”.¹⁰³
- b. Similarly, the Chief Operating Officer of the global transport and logistics company DSV reportedly stated that although “*some shippers had gone directly to the carriers [...] he was seeing cargo owners moving back to forwarders*”. He was quoted as saying that: “*We are not concerned about the competitive landscape we are in [...] We trust our asset-light business model, and we are confident also about being able to outgrow the market going forward*”.¹⁰⁴

E. Impact of consortia on prices

- 78. The Associations anticipate that certain stakeholders will point to the higher freight rates witnessed during the pandemic as a factor weighing against replacement of the Retained CBER. This prediction has indeed been confirmed by the Feedback, with rate increases being a feature of multiple submissions.
- 79. In this submission,¹⁰⁵ the Associations have addressed the exceptional set of circumstances which contributed to rate increases during the pandemic and why those increases cannot be attributed to consortia, let alone the Retained CBER. Additionally, WSC has commissioned an expert economic report to further investigate this topic. The report, prepared by Charles River Associates (“CRA”) (“CRA Report”) is attached as **Annex 3** below.
- 80. In the sections below, we provide a high-level summary of the CRA Report, followed by some observations regarding the evolution of prices prior to the COVID-19 pandemic and recent trends.

1. Summary of the CRA Report

¹⁰³ Comments of Markus Blanka-Graff of Kuehne + Nagel, quoted by the JOC, *Shippers turning to spot market as demand, rates weaken: K+N*, 27 October 2022, available at https://www.joc.com/international-logistics/logistics-providers/dsv/shippers-turning-spot-market-demand-rates-weaken-kn_20221027.html?utm_source=Eloqua&utm_medium=email&utm_campaign=CL_JOC%20Daily%2010/28/2%20SUBSCRIBER_PC015255_e-production_E-147357_KB_1028_0617.

¹⁰⁴ Comments of Jens Lund, quoted by the JOC in the article cited at fn. 103 above.

¹⁰⁵ See further, paras. 47-57.

81. WSC asked CRA to identify, by means of an economic analysis, the main factors that were likely responsible for the increase in freight rates during the pandemic. We briefly summarise CRA’s analysis below, but trust that the Commission will review the full analysis (provided in Annex 3) which includes a presentation of the relevant underlying data.
82. CRA begins its assessment by finding that freight rates on all European major trade routes increased from the end of 2020 through 2021.¹⁰⁶ CRA then examines the wide range of factors that could in theory have influenced shipping rates during that period. In this context, CRA distinguishes between five categories of variables: (i) measures of consortia presence;¹⁰⁷ (ii) cost variables; (iii) demand variables; (iv) supply variables; and (v) combined demand and supply variables.¹⁰⁸
83. Based on its detailed examination of the variables referenced above, CRA draws the following conclusions.
84. First, CRA finds no evidence indicating that consortia presence caused the increase in freight rates.¹⁰⁹
- a. CRA’s measures of consortia presence remained relatively constant while freight rates surged.
 - b. When CRA compares freight rate hikes and consortia concentration “pre-” and “post-pandemic” by trade-route, CRA finds no visible relationship indicating that freight rates increased more on routes with higher consortia presence.
85. Second, CRA finds strong evidence that freight rate increases were the result of changes in exogenous factors.¹¹⁰ Specifically:
- a. Bunker costs (the main variable cost for carriers) started to increase sharply shortly before the surge in freight rates.

¹⁰⁶ CRA Report, Section 2.2.

¹⁰⁷ CRA explains that it relies on two distinct metrics to measure the degree of consortia presence on the routes. See CRA Report, para. 41.

¹⁰⁸ CRA Report, Section 3.

¹⁰⁹ CRA Report, Section 3.1 and econometric analysis in Section 4.

¹¹⁰ CRA Report, Sections 3.2-3.5 and econometric analysis in Section 4.

- b. Demand for shipping increased.
 - c. There were significant supply frictions as the percentage of inoperative capacity due to vessel delays increased significantly (often induced by port closures, port congestions, or labour shortages). That increase in “lost capacity” was unrelated to consortia presence on the specific routes.
 - d. Based on combined supply and demand factors, the effective utilisation rate increased, because of a decrease in the adjusted capacity (*i.e.*, capacity adjusted for capacity absorption due to port/inland delays) and an increase in volumes/demand. CRA notes that liner shipping companies were unable to increase capacity since all available vessels were utilised and there was a lack of new shipping containers.¹¹¹
86. CRA ultimately concludes that, based on the evidence, freight rates increased primarily due to external factors such as increased bunker costs, increased demand, the pandemic, and reduced effective capacity relative to demand. CRA finds that the presence of consortia on routes does not appear to have played a role in freight rate increases.¹¹²

2. Price evolution prior to COVID-19

87. Leaving aside the era of COVID-19, all available evidence demonstrates a link between the prevalence of consortia and consistently decreasing shipping rates. On this point, the Associations would refer in particular to the data (reproduced below) that submitted to the Commission during the prior evaluation,¹¹³ concerning the development of pricing between Q1 2013 and Q2 2018 with and without bunker surcharges (“BAF”). This data, extracted from Drewry Maritime Research, showed that:
- a. Global average quarterly container freight rates dropped by over 30% during the period examined.

¹¹¹ CRA Report, para. 70.

¹¹² CRA Report, para. 16.

¹¹³ See Submission of 20 December 2018 by WSC, the European Community Shipowners’ Associations (“ECSA”), ICS, and ASA, Annex 1, *Report by RBB Economics, 19 December 2018, Response to the EC liner shipping BER consultation*, pages 10-11, available here https://ec.europa.eu/competition/consultations/2018_consortia/wsc_ecsa_ics_asa.pdf.

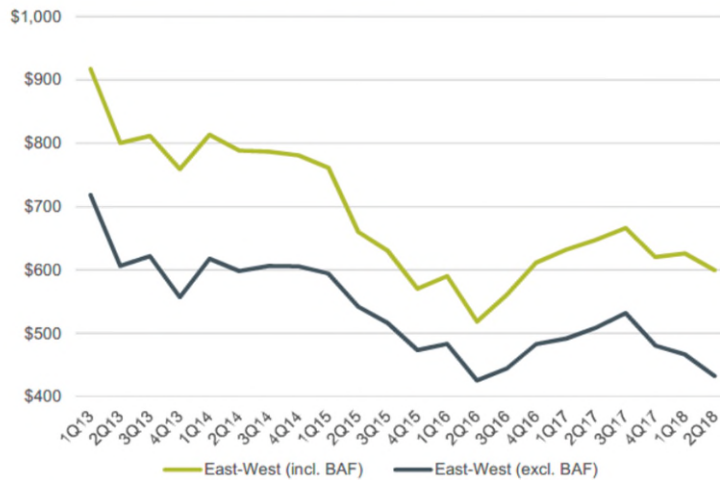
Figure 2: Global average quarterly container freight rates (USD/TEU)



Source: Drewry Maritime Research (www.drewry.co.uk)

- b. Average freight rates on the East-West routes excluding the BAF decreased by almost 40%, whilst rates including the BAF decreased by over 30%, during the period examined.

Figure 3: East-West average quarterly container freight rates (USD/TEU)



Source: Drewry Maritime Research (www.drewry.co.uk)

88. The Associations would also recall the Commission’s findings in the 2019 SWD, based on Drewry Maritime Research data submitted by WSC, that “prices for customers of the liner shipping industry have in fact diminished in recent years alongside costs to carriers” and “at Q3 2018 both revenues and costs per TEU remained below Q1 2013, with revenues per TEU being 23% lower compared to Q1 2013 and operating costs per

TEU being 25% lower".¹¹⁴ The Commission confirmed that this view of the price evolution was shared by industry analysts, such as Alphaliner.¹¹⁵

3. Recent trends

89. Recent market data indicates that the exceptional supply and demand dynamics related to COVID-19, which led to heightened freight rates and a decline in reliability, are normalising.
90. **Rates.** Freight rates have fallen significantly and steadily in recent months. For instance, the Journal of Commerce Online ("**JOC**") recently noted that "*Asia-North Europe spot rates reached their record high on Jan. 1 [2022] [...] and are down 60 percent [...], according to rate benchmarking platform Xeneta*".¹¹⁶ Lloyd's List has also reported on the "*pace of decline in freight rates*",¹¹⁷ noting that:
- a. "[s]lack demand has been reported on both transpacific and China-Europe trades, where rates are expected to continue lurching lower amid easing congestion",¹¹⁸
 - b. the "*SCFI comprehensive index has now fallen 96% since its peak in January, with rates on some trade lanes now a third of where they were at the top of the market*",¹¹⁹ and
 - c. according to Sea Intelligence, "*the slump in spot markets has already spread to contract rates*".¹²⁰

¹¹⁴ 2019 SWD, Section 5.3.5.1, pages 28-29.

¹¹⁵ 2019 SWD, Section 5.3.5.1, page 29.

¹¹⁶ JOC, *Glut of new ocean tonnage inbound as global demand weakens*, 7 October 2022, available at https://www.joc.com/maritime-news/container-lines/2m-alliance/glut-new-ocean-tonnage-inbound-global-demand-weakens_20221007.html?utm_medium=email&utm_campaign=CL_JOC%20Breakbulk%2010/18/22%20_e-production_E-146796_TF_1018_0800&utm_source=Eloqua.

¹¹⁷ Lloyd's List, *Liner shipping carriers enter another price war*, 17 October 2022, available at <https://lloydslist.maritimeintelligence.informa.com/LL1142607/Liner-shipping-carriers-enter-another-price-war>

¹¹⁸ Lloyd's List, *Shipping rates yet to find floor as container throughput in China dips*, 12 October 2022, available at <https://lloydslist.maritimeintelligence.informa.com/LL1142562/Shipping-rates-yet-to-find-floor-as-container-throughput-in-China-dips>

¹¹⁹ SCFI refers to the Shanghai Containerised Freight Index. See Lloyd's List, *Box freight rate decline picks up pace again*, 28 October 2022, available at <https://lloydslist.maritimeintelligence.informa.com/LL1142735/Box-freight-rate-decline-picks-up-pace-again>

¹²⁰ Lloyd's List, *Liner shipping carriers enter another price war*, 17 October 2022, available at <https://lloydslist.maritimeintelligence.informa.com/LL1142607/Liner-shipping-carriers-enter-another-price-war>

91. **Reliability.** According to a recent analysis carried out by Sea Intelligence, there have been significant improvements in 2022 with respect to schedule reliability and vessel delays.¹²¹ Sea Intelligence examined the schedule reliability of “*more than 60 named carriers across 34 different trade lanes, based on more than 12,000 monthly vessel arrivals*”¹²² and found that:
- a. “*Schedule reliability recorded a relatively sharp improvement in June [2022], and then again in August [2022]. Even with a slight decline in September [2022], schedule reliability was firmly above the 2021 levels, and on par to cross the 2020 levels later this year*”.¹²³
 - b. “*2022-Q2 was an improvement with respect to schedule reliability and vessels delays, and 2022-Q3 builds on that with further improvements in global schedule reliability, within both metrics of global average delay, and across-the-board improvement for the top-14 carriers, as well as for the major East/West trade lanes*”.¹²⁴

VI. Benefits of consortia

92. As noted above at para. 22, it has been the Commission’s “*longstanding view that consortia are an efficient way for providing and improving liner shipping services that also benefits customers*”. This positive view of consortia is also reflected in the recitals of the EU CBER and Retained CBER:

*“Consortia [...] generally help to improve the productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities. They also help to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity.”*¹²⁵

93. The Associations will demonstrate in the present submission that the benefits, which have long been associated with consortia, are just as present today. In fact, in certain

¹²¹ Sea-Intelligence Sunday Spotlight, October 30, 2022 – Issue 588, Review of schedule reliability in 2022-Q3, pages 8-15 (“**Sea Intelligence Reliability Analysis**”).

¹²² Sea Intelligence Reliability Analysis, page 8.

¹²³ Sea Intelligence Reliability Analysis, page 8 (emphasis added).

¹²⁴ Sea Intelligence Reliability Analysis, page 15 (emphasis added).

¹²⁵ Retained CBER, recital 5 (emphasis added).

contexts, such as the fight against climate change, the advantages of consortia are more palpable and essential now than ever before. Accordingly, there is no reason for the CMA to withdraw its support for a legal framework (the Retained CBER) that helps to optimise the efficient use of vessel capacity whilst ensuring compliance with UK competition law.

94. In this section, we discuss specific (*i.e.*, non-comprehensive) benefits associated with consortia: (i) environmental efficiency; and (ii) consumer benefits. For each topic, we will first comment on the UK’s policy objectives. We will then explain how consortia contribute, in a positive and meaningful way, to the achievement of those objectives.

A. Environmental efficiency

1. UK’s policy objectives

95. The fight against climate change is one of the most pressing challenges facing the world. The UK’s strategy to meet its climate ambitions is set out in the Government’s *Net Zero Strategy* (“**NZS**”).¹²⁶ It contains the Government’s objectives to decarbonise the economy across a range of sectors including domestic maritime policy. The NZS forms part of the government’s implementation of the Paris Agreement under the United Nations Framework Convention on Climate Change, Article 2 of which includes aims based on “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels”.¹²⁷
96. The NZS has, however, recently been the subject of judicial review by the High Court of Justice in the UK.¹²⁸ In July 2022, the High Court found the Net Zero Strategy does not meet the Government’s obligations under the Climate Change Act 2008 to produce detailed climate policies that show how the UK’s legally-binding carbon budgets will be met. In particular, the NZS did not go below national and sector levels to look at the contributions to emissions reductions made by individual policies (or by interacting

¹²⁶ Net Zero Strategy, 19 October 2021, available at: <https://www.gov.uk/government/publications/net-zero-strategy>.

¹²⁷ Paris Agreement, adopted by 196 Parties at COP 21 in Paris, on 12 December 2015, entering into force on 4 November 2016, available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

¹²⁸ Judgment of the High Court of 18 July 2022, Friends of the Earth and ors. v. Secretary of State for Business, Energy and Industrial Strategy, [2022] EWHC 1841 (Admin), available at: <https://www.judiciary.uk/wp-content/uploads/2022/07/FoE-v-BEIS-judgment-180722.pdf>.

policies) where assessed as being quantifiable. Additionally, the High Court further noted that a carbon shortfall in the NZS was unaccounted for in the report itself. Analysis of the NZS's figures revealed that calculations used to quantify the impact of the policies' emissions cuts only amounted to 95% of the required reductions, and that the report failed to explain how the 5% shortfall would be made up.

97. The Government has recently launched a review of its approach to net zero to “*ensure it is pursuing the most economically efficient path to meeting its climate change commitments*”¹²⁹ with a report due at the end of this year. This comes at a time of global focus on climate change strategy at COP27.¹³⁰
98. Accordingly, the challenges of decarbonising transportation in the UK, including in the maritime sector, have never been more front of mind. In the face of such challenge, the UK has already expressed its commitment to sustainable maritime strategies, and acknowledged the opportunities these create for the nation.
99. Indeed, a recent paper prepared by the Board of Trade within the UK's Department for International Trade states that:

“Green trade presents a major opportunity for the UK, creating high-value jobs in the low-carbon economy, driving sustainable growth in all corners of the nation, and fuelling technological innovations. The UK can spearhead the global green transition by developing innovative green technologies to export to the world and by doubling down on its success as a global hub for green finance. The Clean Growth Strategy estimates that the UK's low-carbon economy could grow by 11% per year between 2015 and 2030, 4 times faster than the rest of the economy, and deliver between £60 billion and £170 billion

¹²⁹ Net Zero review: terms of reference, 26 September 2022, available at: <https://www.gov.uk/government/publications/review-of-net-zero/net-zero-review-terms-of-reference>. It does not appear that this review is directly connected to the judgment of the High Court, which the Government has confirmed by letter to the High Court and the parties involved that it would not appeal (see further, https://goodlawproject.org/news/nz_update/). In any event, the Government will now need to direct its efforts at publishing a revised Net Zero Strategy which complies with the High Court's ruling.

¹³⁰ The 27th session of the Conference of the Parties of the UNFCCC (COP 27), which aims to build on previous successes and pave the way for future ambition to effectively tackle the global challenge of climate change.

*of export sales of goods and services by 2030. The UK has been one of the leading nations of this transition.*¹³¹

100. Additionally, on 24 May 2022, the UK announced a package of initiatives to decarbonise the UK maritime sector and transition to zero emission shipping, including the establishment of the UK Shipping Office for Reducing Emissions.¹³² This suite of initiatives is to be delivered in parallel with the maritime commitments in the UK’s ‘Transport Decarbonisation Plan’¹³³ and the separate Clean Maritime Plan.¹³⁴
101. Finally, most recently at this year’s COP27 conference, the UK pledged (alongside the US, Norway, and the Netherlands) to roll out green maritime links, so-called ‘green shipping corridors’ decarbonised from end-to-end.¹³⁵ These involve using zero-emission fuel or energy, putting in place refuelling or recharging infrastructure at ports, and deploying zero-emission capable vessels for more environmentally-friendly shipping on a given route.

2. Contribution of consortia to UK objectives

102. The Commission confirmed, in the 2019 SWD, that “*by facilitating certain consortia, the Consortia BER contributes to reducing the environmental impact of maritime transport*”.¹³⁶ The reason for this finding – which remains as valid today as in 2019 – is simple: consortia entail carriers consolidating cargo and sharing the space on their ships to maximise operational efficiency through better fleet utilisation. As noted in the recitals to the Retained CBER, consortia help by “*facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity*”.¹³⁷ From an

¹³¹ Embracing the ocean: a Board of Trade paper, 10 March 2022, available at: <https://www.gov.uk/government/publications/board-of-trade-report-maritime/embracing-the-ocean-a-board-of-trade-paper-web-version#uk-strengths-and-opportunities>.

¹³² Written statement to Parliament, UK Shipping Office for Reducing Emissions, 24 May 2022, available at: <https://www.gov.uk/government/speeches/uk-shipping-office-for-reducing-emissions>.

¹³³ Transport Decarbonisation Plan, 14 July 2021, available at: <https://www.gov.uk/government/speeches/transport-decarbonisation-plan>. This plan sets out further commitments for the maritime sector, including on how to phase out emissions from vessels.

¹³⁴ Clean Maritime Plan, 11 July 2019, available at: <https://www.gov.uk/government/publications/clean-maritime-plan-maritime-2050-environment-route-map>.

¹³⁵ Maritime sector given green boost with major COP27 pledge, published 7 November 2022, available at: <https://www.gov.uk/government/news/maritime-sector-given-green-boost-with-major-cop27-pledge#:~:text=So%2Dcalled%20'green%20shipping%20corridors,land%2Dside%20infrastructure%20and%20vessels>.

¹³⁶ 2019 SWD, Section 5.4, page 33.

¹³⁷ Retained CBER, recital 5 (emphasis added).

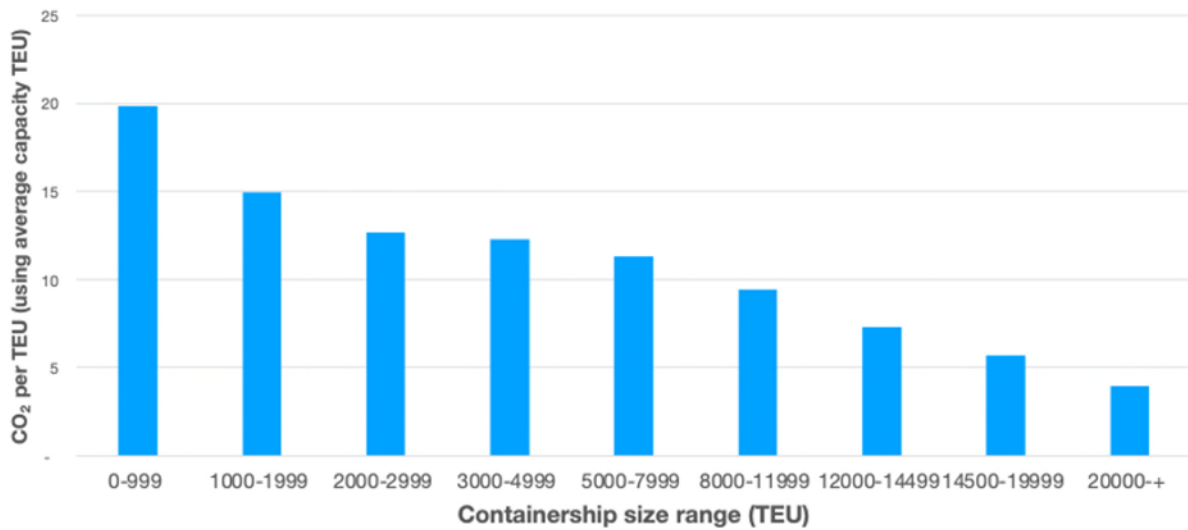
environmental perspective, the rationale for consortia is no different from the rationale for public transport systems and car-pooling schemes: they all seek to maximise efficiency, thereby reducing emissions, through the shared use of transport assets and infrastructure.

103. As a general principle, it is better for the environment if carriers utilise a smaller number of larger ships, rather than a larger number of smaller ships. This is because, for example, the fuel consumption and thus the emissions from one large ship carrying 15,000 container units (twenty-foot equivalent units, or “TEU”) are less than the emissions from three smaller ships carrying 5,000 TEU each. This general principle is borne out by empirical evidence, most notably the data compiled by the IMO for the “*Fourth IMO Greenhouse Gas Study*” (“**4th IMO GHG Study**”).¹³⁸ The 4th IMO GHG Study includes a table which shows (among other data points) CO2 emissions totals by containership size, reported in tonnes CO2 by vessel TEU capacity.¹³⁹ Based on that table, it is possible to take the average TEU for each size range and, accounting for the number of ships in each size range, calculate “typical” CO2 emissions per TEU on a vessel capacity basis for each size range. We have presented the results of these calculations below, which demonstrate that larger containerships result in much lower CO2 emissions per TEU (they can reduce by two-thirds or more the per-TEU GHGs emitted by smaller containerships).

¹³⁸ IMO, *Fourth Greenhouse Gas Study 2020*, available at <https://www.imo.org/en/OurWork/Environment/Pages/Fourth-IMO-Greenhouse-Gas-Study-2020.aspx>

¹³⁹ See 4th IMO GHG Study, Full Report, Table 35, page 99.

Containership relative tonnes CO₂ per TEU (using average capacity TEU size in range per Table 35 of GHG4)



Container size range (TEU)	Average of size range	Number of vessels	Sum of Total CO ₂ (million tonnes)	tonnes CO ₂ per TEU (using median TEU size in range)
0-999	500	1027	10.2	20
1000-1999	1,500	1271	28.5	15
2000-2999	2,500	668	21.2	13
3000-4999	4,000	815	40.1	12
5000-7999	6,500	561	41.3	11
8000-11999	10,000	623	58.8	9
12000-14499	13,500	227	22.3	7
14500-19999	17,200	101	9.9	6
20000+	20,000	44	3.5	4

104. The above conclusions are also supported by the 4th IMO GHG Study’s presentation – in Table 60 of the Report – of “carbon intensity per ship type and size category in year 2018”.¹⁴⁰ We have included below an extract from Table 60, which shows that the “Energy Efficiency Operating Index” for CO₂ gram per ton mile for vessels of 20,000+ TEU is less than half of that for vessels of 5-8000 TEU (which is likely to be the size of vessel that would be needed for a carrier to replace a consortia service with a standalone-service).

¹⁴⁰ See 4th IMO GHG Study, Full Report, Table 60, page 181.

Ship type	Size category	Units	EEOI (gCO ₂ /t.nm)				
			mean	median	lower quartile	upper quartile	spread scale
Container	0-999	teu	35.3	36.7	29.7	48.5	0.52
	1000-1999	teu	26.9	27.4	23.7	31.9	0.30
	2000-2999	teu	19.9	19.5	17.3	22.4	0.26
	3000-4999	teu	17.1	17.1	14.8	19.2	0.26
	5000-7999	teu	16.3	16.3	14.5	18.1	0.22
	8000-11999	teu	13.4	13.6	12.0	15.2	0.24
	12000-14499	teu	10.8	10.7	9.7	12.2	0.23
	14500-19999	teu	8.1	8.5	6.8	8.9	0.25
	20000-+	teu	7.9	8.0	6.7	9.5	0.34

105. The correlation between vessel size and fuel efficiency is also explored in RBB Report I. RBB demonstrates that larger vessels use less fuel on a per TEU basis – which translates into less emissions of CO₂, SO₂ (Sulfur Dioxide) and NO_x (Nitrogen oxides) – than smaller vessels.¹⁴¹
106. To operate regularly scheduled services with a high load factor and the most efficient-sized ships, carriers must be able to attract sufficient volumes of regular cargo. The likelihood of filling a large ship is higher in a consortium because the space on the ship is being sold by multiple carriers, rather than a single carrier. Indeed, consortia are the only means by which carriers can provide their customers with the number and frequency of services that they require whilst minimising fuel consumption and emissions.
107. For these reasons, it is beyond question that consortia contribute to the UK’s sustainability objectives for green trade, referenced above at paras. 95-101. As discussed further below, the Retained CBER facilitates and encourages consortia because it provides legal certainty to carriers that they are not violating competition law through their operational cooperation. The Retained CBER is also therefore an essential tool which must be maintained if the UK is to achieve its environmental objectives, and remain at the forefront of global maritime policy. Indeed, given the

¹⁴¹ See RBB Report I, Section 3.2, pages 11-12, in particular, Tables 4 and 5.

growing threat posed by the climate emergency, the need for the Retained CBER has never been greater.

108. **Ensuring trading opportunities.** In the 2019 SWD, the Commission noted that consortia “*can lead to [...] better coverage of ports (improvement in the frequency of sailings and port calls)*”.¹⁴² This finding corresponds to statements made in the recitals to the EU CBER,¹⁴³ and also to findings made by the Commission in its merger control decisional practice. For instance, in *CMA CGM / NOL*, the Commission stated that “*the cooperation of consortia members [enables the] offering [of] greater frequencies [and] port calls*”.¹⁴⁴ Similarly, when discussing alliances in its *COSCO SHIPPING / OOIL* decision, the Commission stated that “*the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location*”.¹⁴⁵
109. Based on the above, it is well established that one of the benefits of consortia is that they allow carriers to reach a greater number, and greater variety, of ports than would be possible in the absence of consortia. The reasons for this, from an economic perspective, are explained in RBB Report I.¹⁴⁶ With respect to trades to/from the UK, this expanded port coverage naturally creates additional trading opportunities that would not exist, but for consortia (this includes with emerging economies). Therefore, consortia undoubtedly help the UK to achieve its objective of being a global leader in world trade.¹⁴⁷ Also, because the Retained CBER facilitates and encourages consortia, it too is an essential tool to help the UK achieve this objective.

B. Consumer benefits

1. Cost, service and price benefits

110. RBB Report I explores in detail the various ways in which consumers benefit from consortia. We briefly summarise RBB’s analysis below (supplementing with our own

¹⁴² 2019 SWD, Section 2.2, page 7 (emphasis added).

¹⁴³ EU CBER, recital 6.

¹⁴⁴ Case M.7908 – *CMA CGM / NOL*, para. 26 (emphasis added).

¹⁴⁵ Case M.8594 – *COSCO Shipping / OOIL*, para. 29 (emphasis added).

¹⁴⁶ RBB Report I, Section 3.2, page 13.

¹⁴⁷ Embracing the ocean: a Board of Trade paper, 10 March 2022, available at: <https://www.gov.uk/government/publications/board-of-trade-report-maritime/embracing-the-ocean-a-board-of-trade-paper-web-version#uk-strengths-and-opportunities>.

comments, as appropriate), but trust that the CMA will review the full analysis at Section 3.2 of RBB Report I.¹⁴⁸

111. **Lower costs.** Consortia allow carriers to operate larger vessels than they could efficiently operate alone. This enables carriers to provide shipping services at lower costs, because operating costs per unit decrease (*i.e.*, the costs associated with sailing, docking and handling are allocated over a higher number of containers). Also, whilst vessel charter rates increase according to the capacity of the vessel, they do not do so proportionally (*e.g.*, the fact that one vessel has twice the capacity of another does not mean that the former costs twice as much as the latter). Thus, consortia generate cost savings for carriers, which can be passed on to consumers in the form of lower prices.
112. Opponents of the Retained CBER will likely argue that the rate increases witnessed during the pandemic disprove the notion of cost savings being passed on to consumers. This is simply not true. As explained above in Section IV.B (and further examined in RBB Report I), COVID-19 unleashed macroeconomic forces that were unprecedented and anomalous. Rate increases during such exceptional times can simply not be used as evidence that costs savings are not passed on to consumers by consortia members. An exceptional set of circumstances created by a “*once-in-a-lifetime pandemic*” (to quote the United Nations Secretary General)¹⁴⁹ cannot be invoked to disregard basic economic theory which has held true for decades. The Associations respectfully urge the Commission to assess this issue from an economic perspective and to consider, in particular, the relevant counterfactual: in the hypothetical absence of consortia – that is, a situation where carriers would not benefit from cost-saving efficiencies associated with consortia agreements – how would shipping rates have likely evolved during the pandemic?
113. **Higher frequencies.** Consortia agreements allow carriers to offer a higher frequency of sailings compared to independent service offerings.¹⁵⁰ This is: (i) explained at para.

¹⁴⁸ RBB Report I, pages 7-14.

¹⁴⁹ See <https://www.un.org/en/un-coronavirus-communications-team/all-hands-deck-fight-once-lifetime-pandemic> (emphasis added).

¹⁵⁰ See, e.g., Case M.8330 – *MAERSK LINE / HSDG*, para. 55: “*the cooperation of consortium members in jointly operating container liner shipping services [...] enables achieving certain efficiencies, notably by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, by offering greater frequencies, port calls, and, more generally, by promoting technical and economic progress*” (emphasis added).

106 above; (ii) illustrated by example in RBB Report I,¹⁵¹ and (iii) borne out by empirical data.¹⁵² On this point, there can be no doubt that the efficiency benefits of consortia are shared with consumers because they have a greater choice as to the departure date for their cargo.

114. **Better port coverage.** As noted above at paras. 108-109, consortia enable carriers to reach a greater number, and greater variety, of ports than would be possible in the absence of consortia. This is illustrated by example in RBB Report I.¹⁵³ Thus, the efficiency benefits are clearly shared with consumers because they have a greater choice as to: (i) the ports from which they can ship their cargo, and (ii) the ports to which they can ship their cargo.
115. **Price competition.** The final benefit discussed in RBB Report I is direct price competition between carriers within a consortium. RBB explains (and illustrates by example) that carriers operating within a consortium have limited scope to differentiate their services within a consortium based on, for instance, sailing date or ports called.¹⁵⁴ The carriers are therefore likely to compete more fiercely on price. Any reduction in price resulting from this competition is clearly a benefit that consumers enjoy due to the consortium.
116. As a final comment regarding the consumer benefits of consortia, the Associations would note that, excluding the extraordinary impacts of the COVID-19 crisis, there is decades-long evidence that reduced costs arising from consortia *are* passed on to consumers through lower prices (as the Commission has acknowledged in previous evaluations of the EU CBER).¹⁵⁵

¹⁵¹ RBB Report I, Section 3.2, page 12.

¹⁵² See, for instance, “Greenland climbs high on UN list of port connectivity”, Shipping Watch, 27 September 2022: “Greenland has stormed up the United Nations Conference on Trade and Development’s (UNCTAD) list of connectivity, meaning that Greenlandic ports are now significantly better connected to the rest of the world than before [...] The big increase is due to a co-sailing agreement [between Royal Arctic Line (RAL) and] Icelandic carrier Eimskip. The deal was signed in 2020 and ensured RAL weekly sailings throughout the year, unlike in the past, when the company only had departures twice every three weeks. Destinations were also expanded from two to four countries – Denmark, Sweden, the Faroe Islands and Iceland – and RAL gained access to larger ships of 2,150 teu instead of 700 teu”, available at https://shippingwatch.com/Ports/article14440978.ece?utm_campaign=ShippingWatch%20Newsletter&utm_content=2022-09-27&utm_medium=email&utm_source=shippingwatch_com

¹⁵³ RBB Report I, Section 3.2, page 13.

¹⁵⁴ RBB Report I, Section 3.2, page 14.

¹⁵⁵ See, e.g., 2019 SWD, Section 5.3.5.1, pages 28-29.

VII. Importance of the Retained CBER

117. As the CMA explained in its review of the retained Horizontal Block Exemption Regulations,¹⁵⁶ block exemption regulations (“**BERs**”), such as the Retained CBER, “*provide legal certainty to businesses as they enable them to know in advance how to ensure that their agreements comply with competition law*”.¹⁵⁷ As the Commission explained in the 2019 SWD, BERs also contribute to legal clarity by “*providing more specific and concrete guidance than general instruments of competition law [...] as to the way those rules would apply in a specific industry and to specific contracts*”.¹⁵⁸ They contribute to legal certainty and raise levels of compliance by leaving “*less space for misinterpretation of the rules*”.¹⁵⁹ As noted above at para. 22, with respect to the EU CBER, the Commission found that it “*provides clearer guidance and higher level of legal certainty [...] facilitates the assessment of consortia’s compliance with competition rules [...] helps carriers to save resources [and therefore] the liner shipping sector [requires] a sector-specific BER*”.¹⁶⁰
118. In this section, we will explain why the above findings still hold true today and why the benefits of consortia, explained in Section VI above, can only be fully realised, and passed on to consumers, if the Retained CBER is replaced with a UK equivalent on expiry. We will first explain how the Retained CBER reduces compliance costs for carriers (in turn, allowing carriers to be more agile in response to market changes); we will then explain why it is essential for liner shipping consortia to have sector-specific guidance (even though the Commission generally regards sector-specific BERs as “*exceptional measures*”).¹⁶¹

A. Reduced compliance costs and greater agility

119. As noted by the Commission in the 2019 SWD, competition law compliance costs “*exist on a continuous basis*” “*for all carriers involved in consortia*”.¹⁶² This is due to the dynamic nature of consortia agreements and the fact that market conditions and

¹⁵⁶ CMA HBERs Final Recommendation, paras. 3.4-3.5.

¹⁵⁷ *Ibid*, note 156.

¹⁵⁸ 2019 SWD, page 5.

¹⁵⁹ *Ibid*, note 158.

¹⁶⁰ 2019 SWD, page 35.

¹⁶¹ *Ibid*, note 160.

¹⁶² 2019 SWD, Section 5.2, page 18 (emphasis added).

market shares are continuously changing.¹⁶³ The Commission considered and compared the costs associated with a self-assessment under the CBER, on the one hand, to the cost of an assessment without the CBER. The Commission found that:

*“it is clear that [the cost of a compliance assessment] would increase in the absence of the Consortia BER. This increase could be principally significant for small and medium carriers, for which it is more difficult to operate in the sector that is characterised by a general low profitability”.*¹⁶⁴

120. The Commission also found that reliance on other sources of guidance on the application of Article 101 TFEU – such as the (then applicable) Horizontal Guidelines, Article 101(3) Guidelines, the Specialisation Block Exemption Regulation (“**SBER**”), the Commission’s enforcement practice, and EU case-law – would not be an adequate substitute for the CBER because those sources:

*“cannot provide the same level of legal certainty as the Consortia BER that was tailored specifically to consortia, and is also more complex, requiring higher degree of expertise in competition law. In turn, this may require carriers to seek the advice of external experts and may leave a degree of uncertainty given the need for legal interpretations. It therefore cannot be performed with the same facility as the application of the Consortia BER.”*¹⁶⁵

121. All of the arguments submitted by carriers in the previous evaluation, which led the Commission to the above conclusions, apply with equal force today, both in the context of the EU CBER and Retained CBER. These arguments are briefly summarised below.

122. **Reduced need for external advice.** In-house legal and economic professionals working in the liner shipping industry understand how to apply the CBER in practice, without needing to consult external advisors (save for special cases). This not only saves time, but it also reduces costs significantly, especially for carriers that are members of multiple different consortia. These cost savings can be passed on to customers.

123. **Operational implementation.** Given its simplicity and specificity to the liner shipping sector, the Retained CBER is understood by operational personnel who manage vessel deployments and network design, including through the use of consortia. This allows

¹⁶³ 2019 SWD, Section 5.2, page 18.

¹⁶⁴ 2019 SWD, Section 5.2, page 19.

¹⁶⁵ 2019 SWD, Section 5.1, page 18 (emphasis added).

for the faster implementation of operational changes that are necessary to reflect new or amended consortia agreements. This is important, as the operational details of a consortium agreement can often be complex.

124. **Increased agility.** As noted by the Commission in the 2019 SWD, carriers “*are typically members of a large number of consortia agreements that are frequently replaced or amended*”.¹⁶⁶ The Retained CBER makes these frequent amendments possible due to its ease of application, which allows for a less time-consuming assessment, and the legal certainty it provides (paras. 122-123 above). Carriers are therefore more agile in responding to changing market conditions than would be the case absent the Retained CBER. If the carriers were required to consult external advisors, and operational personnel needed to wait for the outcome of that advice, this would jeopardise carriers’ ability to react and adapt to market forces in a timely manner. This type of agility is critical, especially during times of significant market disruption (*e.g.*, the COVID-19 crisis).
125. **Disproportionate burden for smaller carriers.** The costs of undertaking a self-assessment, rather than being able to rely on the Retained CBER, are likely to be disproportionately burdensome for small and medium sized carriers. This could deter such carriers from participating in consortia, especially considering the time commitment required for carrying out a self-assessment and the potentially indeterminate conclusion of the exercise (which, of course, is also a consideration for carriers of every size).

B. Need for a sector-specific BER

126. In the previous evaluation, the Commission assessed whether it was necessary to have sector-specific rules for consortia, considering the Commission’s general policy of reducing the number of sector-specific measures in favour of more general guidance on the application of Article 101 TFEU.¹⁶⁷ In addition to the findings reproduced above at para. 120 (*i.e.*, that other sources of available guidance, such as the Commission’s

¹⁶⁶ 2019 SWD, Section 5.1, page 17 (emphasis added).

¹⁶⁷ See 2019 SWD, page 46: “*the Commission asked whether the Consortia BER is coherent with the general policy of harmonising competition rules and replacing sector-specific rules with measures (BERs or guidelines) providing general guidance on the application of Article 101 TFEU.*”

Horizontal Guidelines, were not an adequate substitute for the CBER), the Commission reached the following conclusions:

“The Consortia BER is tailored to consortia agreements, referring to arrangements that are specific to consortia. It also employs industry-specific terminology that is easily understandable to industry participants”.¹⁶⁸

“The Consortia BER uses industry-specific terminology, refers to arrangements that are very specific to consortia (that differ significantly to other sectors), and therefore offers more precise guidance than other instruments providing general guidance on the application of competition rules. By its very nature as a sector-specific instrument the Consortia BER provides higher legal certainty to consortia than would have been the case without it. Its application also saves to a certain extent resources dedicated to the assessment of compliance with competition rules”.¹⁶⁹

“The Consortia BER is a sector-specific measure referring directly to the special arrangements of this type of cooperation. Consequently it provides clearer guidance and higher level of legal certainty to consortia than would have been the case in its absence. The Consortia BER thus facilitates the assessment of consortia’s compliance with competition rules, and helps carriers to save resources”.¹⁷⁰

127. Nothing has changed since 2019 that could lead the Commission to reach different conclusions than those reproduced above. The Associations respectfully submit that the CMA ought also to be guided by the Commission’s reasoning.

1. Other sources of guidance are not sufficient

(i) Any CMA equivalent of the Commission’s Horizontal Guidelines would not adequately address the unique situation of consortia

128. In the prior evaluation before the Commission, the Associations explained why the Commission’s current Horizontal Guidelines¹⁷¹ (“**Current Guidelines**”) (which are due to expire on 31 December 2022) do not offer self-assessment guidance equivalent to the EU CBER. The Commission has since published draft revised Horizontal

¹⁶⁸ 2019 SWD, Section 5.1, page 17 (emphasis added).

¹⁶⁹ 2019 SWD, Section 5.5, page 34 (emphasis added).

¹⁷⁰ 2019 SWD, Section 6, page 35 (emphasis added).

¹⁷¹ Communication from the Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ (2011) C 11/1.

Guidelines (“**New Guidelines**”).¹⁷² Given the characteristics of consortia agreements and the scope of the CBER, there are only two chapters of the New Guidelines that could potentially offer relevant guidance for a competition law self-assessment of consortia agreements:¹⁷³ the chapters related to “Production Agreements” and “Sustainability Agreements”. For the purpose of our present comments, we assume that the New Guidelines will be adopted in their current form. We address both chapters below and explain why the guidance provided therein would be inadequate to serve as a replacement for the EU CBER or the Retained CBER (if the CMA were to adopt its own guidance on the topic of horizontal agreements).

129. At the outset, the Associations would note that legislation provides greater legal certainty. As is currently the case for the Retained CBER, where the Secretary of State were to make a block exemption order pursuant to section 6 CA98, that legislation would bind (i) the UK courts, who are bound by the principle of parliamentary sovereignty; and (ii) the CMA itself. Furthermore, any guidance would be without prejudice to the case law of the UK courts (as well as EU retained case law, to the extent relevant and binding) concerning the application to horizontal agreements of the Chapter I prohibition and, where relevant, Article 101 of the Treaty on the Functioning of the European Union. Therefore, even if the carriers were to incur the expense, complexity and duration of a self-assessment based on guidelines, they would not have the same degree of legal certainty that they currently enjoy under the Retained CBER (that certainty being crucial to facilitate the creation and operation of consortia).

130. **Production Agreements.** A significant portion of the guidance on “Production Agreements”¹⁷⁴ concerns agreements that are covered by the draft revised SBER

¹⁷² Available at https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en. The CMA also envisages preparing guidance to accompany the UK HBEOs, with a related consultation expected later in 2022; see further, CMA HBERs Final Recommendation, para. 2.13. It appears that even if the scope of this guidance is confined to research & development, and specialisation agreements, the CMA is also preparing to review the full text of the EU Horizontal Guidelines: CMA HBERs Final Recommendation, para. 5.50.

¹⁷³ We do not consider it necessary to discuss in this context the following chapters of the New Guidelines, on the basis that they do not correspond to the characteristics of consortia agreements: research & development agreements (Chapter 2), purchasing agreements (Chapter 4), commercialisation agreements (Chapter 5), standardisation agreements (Chapter 7), and standard terms (Chapter 8). Regarding information exchange (Chapter 6), we also do not address this chapter, as the guidance provided therein could only relate to one aspect of consortia (*i.e.*, the limited exchange of information between consortia members which is required for the operation of the joint service, such as, capacity, port calls and sailing schedules) but not the other activities currently listed in Article 3 of the EU CBER.

¹⁷⁴ New Guidelines, paras. 203-310.

(“**New SBER**”).¹⁷⁵ We address the New SBER separately below (paras. 141-144). Regarding agreements falling outside the scope of the New SBER, the New Guidelines contain an expanded discussion (compared to the Current Guidelines) of the Article 101(3) TFEU assessment, especially regarding efficiency gains (some of which are pertinent to consortia).¹⁷⁶ However, this expanded discussion of efficiency does not alter the conclusion that the guidance is insufficient to replace the CBER:

- a. the guidance is not tailored to the liner shipping industry, let alone consortia; as the Commission noted in the prior evaluation, the lack of guidance tailored to consortia “*may require carriers to seek the advice of external experts and may leave a degree of uncertainty given the need for legal interpretations*”;¹⁷⁷ and
- b. the guidance does not indicate whether the specific exempted activities listed in Article 3 of the CBER, or the conditions attached to their exemption set out in Articles 5 and 6 of the CBER would pass the requirements of “indispensability” and “pass-on to consumers”, as articulated in the New Guidelines.¹⁷⁸

131. Furthermore, neither the specific guidance provided in Section 3.6 (“*mobile infrastructure sharing agreements*”), nor the five examples provided in Section 3.7 bear any relationship to the kinds of cooperation found in consortia. Those examples are essentially identical to the examples provided in the Current Guidelines.¹⁷⁹ Accordingly, there is no reason for the Commission to depart from its 2019 finding that this guidance would be inadequate to replace the EU CBER.¹⁸⁰ By the same token, the Associations respectfully submit that the same logic ought also to apply to the CMA’s own appraisal of any future guidance document on similar agreements.

132. **Sustainability Agreements.** The New Guidelines contain a newly added chapter on “sustainability agreements”, a term which refers to “*any type of horizontal cooperation agreement that genuinely pursues one or more sustainability objectives, irrespective of*

¹⁷⁵ The SBER is due to expire on 31 December 2022. The Commission has published a new draft SBER, available at https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en

¹⁷⁶ See in particular New Guidelines, para. 288(h) (“*providing cost savings by means of economies of scope*”).

¹⁷⁷ 2019 SWD, Section 5.1, page 18.

¹⁷⁸ New Guidelines, paras. 290-294.

¹⁷⁹ Specifically, examples 1-5 in the New Guidelines (paras. 306-310) correspond to examples 1-4 and 7 in the Current Guidelines (paras. 187-190, 193).

¹⁸⁰ 2019 SWD, Section 5.1, page 18.

the form of cooperation".¹⁸¹ Given their environmental benefits (see Section VI.A above), consortia agreements might well be regarded as "sustainability agreements" under this definition. This does not mean, however, that the guidance in the New Guidelines is a substitute for the CBER, or that any related guidance produced by the CMA could be taken as such.

133. First, the guidance regarding the four cumulative conditions of Article 101(3) TFEU (*i.e.*, efficiency gains, indispensability, pass-on to consumers, and no elimination of competition) is not tailored to the liner shipping industry; we therefore refer to our comments above at para. 130.
134. Second, it is questionable to what extent this guidance may even be applied to consortia. For instance, the discussion of consumer benefits, which is framed under the headings of "*individual use value benefits*", "*individual non-use value benefits*", and "*collective benefits*",¹⁸² seems ill-suited to consortia, as it focusses primarily on business-to-consumer (B2C) sales, using examples such as organic vegetables,¹⁸³ liquid detergent,¹⁸⁴ washing liquid,¹⁸⁵ and fuel purchased by drivers.¹⁸⁶
135. Third, to the extent that the guidance might be applicable to consortia, it would create an undue compliance burden far beyond the current requirements under the Retained CBER. Carriers would be required: (i) to "*substantiate*" in "*objective, concrete and verifiable*" terms, the efficiencies associated with the consortium agreement;¹⁸⁷ and (ii) to demonstrate "*that there are no other economically practicable and less restrictive means of achieving*" the benefits associated with the consortium agreement.¹⁸⁸ These issues have already been resolved by the CBER – but, in the absence of the CBER, carriers would need to assess them with the assistance of both lawyers and economists, and without the benefit of any decision of the EU Courts on the correctness or

¹⁸¹ New Guidelines, para. 547.

¹⁸² New Guidelines, Sections 9.4.3.1 – 9.4.3.3.

¹⁸³ New Guidelines, para. 591.

¹⁸⁴ New Guidelines, para. 593.

¹⁸⁵ New Guidelines, para. 595.

¹⁸⁶ New Guidelines, para. 604.

¹⁸⁷ New Guidelines, para. 579.

¹⁸⁸ New Guidelines, para. 581.

application of the Commission’s guidance on sustainability agreements.¹⁸⁹ It is also noted that the Commission has chosen not to follow the approach of the Dutch competition authority, which has assured the parties to “good faith” efforts to achieve sustainability goals that they will not face fines if their cooperation is ultimately found to be unlawful.¹⁹⁰

136. Finally, none of the specific examples provided at the end of the chapter bear any resemblance to consortia agreements.¹⁹¹

(ii) Any CMA equivalent to the Commission’s Article 101(3) Guidelines would also not be sufficient

137. There is no UK equivalent to the Commission’s Article 101(3) Guidelines. However, the Associations present the following comments on the Commission’s guidance in the hope that it will provide some instructive commentary for the CMA in its appraisal of the Retained CBER.

138. By their very nature, the Article 101(3) Guidelines are only of general application. They must be applied “*reasonably and flexibly*” according to “*the circumstances specific to each case*”.¹⁹² They cannot be considered equivalent to the CBER, which applies to the specific forms of cooperation unique to liner shipping. Indeed, the Article 101(3) Guidelines are even more general than the Horizontal Guidelines, which provide specific advice on certain types of horizontal agreements (albeit, not consortia).

139. Under the Article 101(3) Guidelines, self-assessment of cost efficiencies requires the undertakings to “*calculate or estimate the value of the efficiencies and describe in detail how the amount has been computed*”.¹⁹³ This rigorous self-assessment by every member of every consortium would be unduly burdensome (especially considering the

¹⁸⁹ New Guidelines, para. 54 reads: “*These Guidelines are without prejudice to the interpretation the Court of Justice of the European Union may give to the application of Article 101 to horizontal cooperation agreements.*”

¹⁹⁰ See second draft version of the Guidelines on Sustainability Agreements, published by the Authority for Consumers & Markets on 26 January 2021, para. 72, available at <https://www.acm.nl/en/publications/second-draft-version-guidelines-sustainability-agreements-opportunities-within-competition-law>

¹⁹¹ New Guidelines, paras. 617-621.

¹⁹² Communication from the Commission, Notice, Guidelines on the application of Article [101(3)] of the Treaty, OJ (2004) C 101/97 (“**Article 101(3) Guidelines**”), para. 6.

¹⁹³ Article 101(3) Guidelines, para. 56.

efficiency-enhancing benefits that the Commission has long associated with consortia) and would dramatically increase compliance costs.

140. Similarly, the Article 101(3) Guidelines state that market shares are not considered sufficient to prove that competition has not been eliminated. The assessment must also include consideration of the capacity of actual competitors to compete and their incentive to do so.¹⁹⁴ Again, this cannot be considered equivalent to the clarity provided by the bright line rules in the Retained CBER and would lead to a disproportionate increase in compliance costs.

(iii) The new UK Specialisation BEO will not be sufficient

141. In the prior evaluation, the Associations explained why the Commission’s current Specialisation Block Exemption Regulation¹⁹⁵ (“**Current SBER**”) (which is due to expire on 31 December 2022)¹⁹⁶ does not offer self-assessment guidance equivalent to the CBER. The Commission has since published a draft revised Specialisation Block Exemption Regulation¹⁹⁷ (“**New SBER**”), and the CMA has recommended to the Secretary of State that he replace the retained HBERs with a UK Specialisation Block Exemption Order and a UK R&D Block Exemption Order (the “**UK Specialisation BEO**” and the “**UK R&D BEO**”, respectively). For the purpose of our present comments, we assume that the Secretary of State will implement the final recommendation of the CMA.¹⁹⁸ Even so, the UK Specialisation BEO cannot serve as an adequate substitute for the Retained CBER for the following reasons. (The Associations do not consider that the UK R&D BEO could even be considered conceptually relevant to the CMA’s assessment of consortia agreements, but would be happy to provide further input on this point if helpful.)

¹⁹⁴ Article 101(3) Guidelines, para. 109.

¹⁹⁵ Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, OJ (2010) L 335/43.

¹⁹⁶ See Current SBER, Article 7.

¹⁹⁷ Available at https://competition-policy.ec.europa.eu/public-consultations/2022-hbers_en

¹⁹⁸ The CMA has proposed the adoption of a UK-specific order which is substantively similar to the Retained HBERs, and which reflects the approach of the Commission to the New SBER. For instance, Annex A of the CMA HBERs Final Recommendation sets out proposed definitions for the UK Specialisation BEO which “*draw on the changes proposed by the EU*” (see further, Annex A, footnote 207, CMA HBERs Final Recommendation).

142. Considering that consortia involve the provision of a “*joint service*” (in the Commission’s own words),¹⁹⁹ it is unclear whether there will be any scope for carriers to rely on the UK Specialisation BEO in relation to their consortia. Even if it might be applicable to consortia agreements, it would not block exempt many arrangements to which the Retained CBER currently applies or provide the same level of specificity, and thus legal certainty, as the Retained CBER. Unlike the UK Specialisation BEO, the Retained CBER specifically defines the forms of cooperation between liner shipping companies that benefit from the block exemption and itemises the range of cooperative activities, the ancillary restrictions, and the maximum notice periods which are compatible with Section 9 CA98. This provides guidance and legal certainty which, on the basis of the CMA’s final recommendation, will be wholly absent in the UK Specialisation BEO.
143. Third, the market share threshold in the UK Specialisation BEO will be markedly lower than that in the Retained CBER: 20% and 30%, respectively.²⁰⁰ The lower 20% threshold is particularly problematic because a consortium's market share is determined by combining the market share of all the consortium's members inside and outside the consortium in the relevant market.²⁰¹ Reducing the threshold to 20% could be expected to reduce the number of consortia that could benefit from the block exemption, making it less relevant than the Retained CBER and increasing the number of consortia that would require self-assessment.
144. Accordingly, the UK Specialisation BEO will not provide an equivalent degree of guidance, protection or legal certainty as the Retained CBER.

(iv) Capacity adjustments and other conditions

145. The list of exempted activities specified in Article 3 of the Retained CBER, in particular the right to adjust capacity in response to fluctuations in supply and demand, is especially valuable to carriers. It is an important efficiency-enhancing tool that would be put in jeopardy in the absence of a sectoral block exemption. This is because none of the sources of guidance referenced above (or indeed, the nature of guidance itself)

¹⁹⁹ 2019 SWD, Section 2.2, page 7.

²⁰⁰ See the retained Regulation 1218/2010 on the application of Article 101(3) of the TFEU to categories of specialisation agreements (“**Specialisation BER**”), Article 3; CMA HBERs Final Recommendation, para. 4.52.

²⁰¹ Retained CBER, Article 5(2).

would provide comfort to carriers that such capacity adjustments were compliant with UK competition law.

146. Additionally, as noted above (at para. 130.b), Article 6 of the Retained CBER specifies “other conditions” to qualify for the Article 3 exemption. These conditions provide valuable consortia-specific guidance and protection to carriers regarding the right to withdraw and maximum notice periods that would be lost in the absence of a sectoral block exemption.

C. Feedback from stakeholders (EC Evaluation)

147. Based on the feedback submitted to the Commission (the “**Feedback**”), it is clear that many different stakeholders – including those opposed to a renewal of the EU CBER – agree with the Associations that sector-specific guidance is required (*i.e.*, that other sources of available guidance, such as the Commission’s Horizontal Guidelines,²⁰² do not provide adequate guidance in relation to liner shipping consortia).²⁰³
148. For instance, at least five stakeholders consider that the Commission should not renew the CBER but should instead adopt new sector-specific guidelines:
- a. According to CLECAT: “*The CBER should be replaced by sector-specific guidelines to ensure that the competition law framework for vessel sharing agreements is transparent, enforceable, and open to scrutiny at times of market stress*”.²⁰⁴
 - b. FEDESPEDI calls on the Commission “*not to renew the CBER, replacing it, instead, by sector-specific guidelines to ensure that the competition law framework for vessel sharing agreements is transparent and enforceable*”.²⁰⁵

²⁰² Communication from the Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, OJ (2011) C 11/1.

²⁰³ See submissions made by: CLECAT, FEDESPEDI, FIFFLA, Fenex, Verband Deutscher Reeder e.V. (“**VDR**”), EBU, Bundesverband Spedition und Logistik e.V. (“**DSL**”), the Bulgarian Association for Freight Forwarding, Transport and Logistic (“**NSBS**”), the Royal Dutch Barge Association (Koninklijke Binnenvaart Nederland, “**KBN**”), Verband der Chemischen Industrie (“**VCI**”), EuroCommerce (a European organisation representing the retail and wholesale sector), Bundesverband der Deutschen Industrie e.V. (“**BDI**”), and ESPO.

²⁰⁴ CLECAT submission, pages 1-2 (emphasis added).

²⁰⁵ See the opening para. of the FEDESPEDI feedback (emphasis added).

- c. According to both Fenex and FIFFLA: “*The CBER should be replaced by sector-specific guidelines to ensure that all stakeholders have legal clarity on the parameters of the future regime*”.²⁰⁶
- d. The EBU calls on the Commission “*to expire the CBER and encourage the development of specific guidelines for this sector to ensure that the competition law framework for vessel sharing agreements is transparent, enforceable and open to scrutiny at times of market stress*”.²⁰⁷
149. The above submissions, advocating the need for *more* – not less – guidance on the application of EU competition law to consortia, confirm the position of the Associations that sector-specific guidance is essential; they also confirm that the Commission’s findings in 2019 remain valid regarding the benefits of guidance that “*employs industry-specific terminology that is easily understandable to industry participants*”.²⁰⁸ In this context, the Associations would also highlight the submission made by ESPO. Whilst ESPO remains neutral on the question of renewal or non-renewal of the CBER, it makes clear that “*the absence of the [CBER] could mean the absence of guidance that is given in the current regulation - guidance that is helpful for members of all alliances, as well as for the other stakeholders [...] conditions and guidance, as given in the Consortia Regulation should exist for all consortia agreements*”.²⁰⁹
150. Importantly, the submissions referenced above at para. 148 also demonstrate that, for certain stakeholders seeking the abolition of the EU CBER, a decision by the Commission to simply not renew the EU CBER will not be a satisfactory outcome; such a decision would need to be accompanied by a Commission initiative to publish new sector-specific guidance (which presumably would need to be in place by 25 April 2024). The Associations cannot see any merit or rationale in such an approach. For the reasons explained in this paper, the EU CBER (and by extension, the Retained CBER) remains fit for purpose for those stakeholders that actually rely upon it as part of their competition law compliance (*i.e.*, the carriers). Moreover, the task of preparing

²⁰⁶ Fenex submission, page 1 (emphasis added); see the concluding para. of the FIFFLA feedback (emphasis added).

²⁰⁷ EBU submission, page 4 (emphasis added).

²⁰⁸ See further, paragraph 126 above, referring to the 2019 SWD, Section 5.1, page 17.

²⁰⁹ ESPO submission, pages 1-2 (emphasis added).

and consulting on new sector-specific guidelines would be burdensome and time-consuming both for the Commission and the CMA.

D. Potential amendments to the legal framework

151. During its meeting with the WSC on 14 October 2022, the CMA expressed interest in exploring potential amendments to the existing legal framework for consortia in the UK. At this juncture, the Associations would refer to stakeholder submissions to the Commission on this topic, and the reasons why these comments should be treated with caution. It is for the reasons stated below, and more broadly in this submission, that the Associations do not support the introduction of amendments to the Retained CBER. To the extent that additional or alternative proposals are raised directly with the CMA, the Associations would be happy to provide further input to the CMA.
152. Several stakeholders have urged the Commission to consider amendments to the EU CBER and/or other legislative changes. For instance:
- a. GSF *“seeks to preserve the benefits [of consortia] but to achieve them through a new legal mechanism, to be developed and agreed, which is more transparent, better targeted, and more easily enforced than the current arrangements”*.²¹⁰ Alternatively, if the Commission decides to renew the CBER, GSF proposes an amendment to the CBER that would oblige consortium members to make formal notifications of market share data to the Commission.²¹¹
 - b. evofenedex recommends having *“DG Move function as [a] specialized agency, similar to the FMC in the US”*.²¹²
 - c. Zentralverband der deutschen Seehafenbetriebe e.V. (**“ZDS”**) proposes an array of amendments to the CBER, including but not limited to measures that would oblige consortium members to: (i) publish their antitrust self-assessments; and (ii) consult their customers and service providers and report to the Commission on those consultations.²¹³

²¹⁰ GSF submission, Section 5, page 6 (emphasis added).

²¹¹ GSF submission, Section 6, page 6.

²¹² evofenedex submission, page 3.

²¹³ ZDS submission, pages 12-13.

- d. VCI urges the Commission to lower the CBER market share threshold to 20% and to impose reporting obligations on consortia that are exempted under the CBER.²¹⁴
 - e. BDI suggests that the CBER market share threshold should be “*significantly lowered*” and that uniform reporting and transparency obligations should be introduced.²¹⁵
 - f. The Hamburg Exporters’ Association urges the Commission (in the event that it decides to renew the CBER) to establish a European complaints body for customers of shipping companies and to empower that body to award lump sum compensation for aggrieved customers.²¹⁶
 - g. BKartA considers that the largest carriers should no longer benefit from the CBER’s safe harbour. BKartA therefore proposes (in the event that the Commission decides to renew the CBER) the introduction of a worldwide fleet capacity limit for a carrier to benefit from the CBER.²¹⁷
153. The above list is a non-comprehensive overview of the patchwork of proposals that have been submitted to the Commission. The Associations would urge the CMA not to take into account such proposals in its review on one or more of the following grounds.
- a. Certain proposals go beyond the remit of the EC Evaluation (*e.g.*, the proposals to create new bodies or modify responsibilities of existing bodies).²¹⁸
 - b. Certain proposals are unworkably vague (*e.g.*, the proposal for a “*new legal mechanism, to be developed and agreed*”).²¹⁹
 - c. Certain proposals are inconsistent with fundamental principles of EU law (*e.g.*, the proposed obligation to publish antitrust self-assessments).²²⁰

²¹⁴ VCI submission, page 1.

²¹⁵ BDI submission, pages 7-8.

²¹⁶ See the concluding para. of the Verein Hamburger Exporteure feedback.

²¹⁷ BKartA submission, page 6.

²¹⁸ See paras. 152b and f above.

²¹⁹ See para. 152a above.

²²⁰ See para. 152c above.

- d. Certain proposals would impose burdensome requirements on both carriers and the Commission, the justification for which has not been properly explained (e.g., the notification and reporting requirements).²²¹
154. Regarding the proposals to lower the EU CBER market share threshold,²²² a topic in which the CMA has expressed interest,²²³ the stakeholders behind such proposals have failed to explain why the existing 30% market share threshold is not fit for purpose. If the CMA were to reduce the market share threshold, this would merely reduce the benefits and relevance of the Retained CBER; indeed, many of the concerns expressed by the Associations regarding any intention not to replace the Retained CBER on expiry with equivalent UK legislation would apply to those consortia that would fall out of its scope under a reduced threshold.
155. Regarding the proposal to introduce a worldwide fleet capacity limit for carriers to benefit from the EU CBER,²²⁴ this proposal is misguided. Carriers and consumers benefit from the efficiencies of vessel sharing (which is facilitated by the EU CBER) regardless of the individual size of the carriers that are members of the consortium. For instance, suppose Consortium A has three members each with a 10% market share, and Consortium B has two members, one with a market share of 25% (“**Large Carrier**”) and the other with a market share of 5% (“**Small Carrier**”). Both of these consortia deliver benefits and efficiencies to the carriers and their customers. Assuming, however, that the Large Carrier would exceed the proposed worldwide fleet capacity limit (thus opting to discontinue its participation in Consortium B), this would have a detrimental impact on the Small Carrier. The Small Carrier would be denied the benefits of economies of scale and scope that sharing space and services with the Large Carrier would otherwise provide.
156. In light of the above, the Associations respectfully reiterate their position that the CMA recommend to the Secretary of State replacement of the Retained CBER with a UK equivalent without amending any of its provisions.

²²¹ See paras. 152a, c, d, e above.

²²² See paras. 152d and e above.

²²³ During its meeting with the WSC, 14 October 2022.

²²⁴ See para. 152g above.

VIII. Conclusion

157. As a final observation, the Associations would note that the Retained CBER is a vital compliance tool for liner shipping consortia which has functioned well – and served consumers well (see, *e.g.*, paras. 87-88 above) – for the last 27 years. We would urge the CMA to keep this fact front of mind during the course of its review. The anomalous and unprecedented market developments associated with the pandemic should not unduly influence the CMA’s decision, especially considering that the ramifications of that decision may endure long after the exceptional market circumstances have fully abated. Indeed, as demonstrated above at paras. 89-91, service improvements and declining freight rates are already evident. Thus, the Associations respectfully ask that the CMA take a long-term view of the issues at stake.
158. For all of the above reasons, the Associations respectfully request that the CMA recommend to the Secretary of State replacement of the Retained CBER with a UK equivalent without amending any of its provisions. The Associations remain at the CMA’s disposal for any further dialogue related to the CMA Evaluation and would be happy to answer any questions that the CMA might have in relation to the present submission and/or the Commission’s review.

SCHEDULE OF ANNEXES

- Annex 1** Report by RBB Economics, 3 October 2022, *Response to the EC liner shipping CBER consultation, Prepared at the request of the World Shipping Council*
- Annex 2** Report by RBB Economics, 13 October 2022, *Liner Shipping Consortia Block Exemption Regulation, An introductory note prepared at the request of the World Shipping Council*
- Annex 3** Report by Charles River Associates (CRA), 4 November 2022, *Liner shipping consortia: Assessment of freight rate developments, Prepared for World Shipping Council*

ANNEX 1

**Report by RBB Economics, 3 October 2022,
*Response to the EC liner shipping CBER consultation,
Prepared at the request of the World Shipping Council***

Response to the EC liner shipping CBER consultation

Prepared at the request of the World Shipping Council

RBB Economics, 3 October 2022

1 Introduction and Executive Summary

This report has been prepared by RBB Economics on behalf of the World Shipping Council (“WSC”), in the context of the evaluation by the European Commission (“EC”) of the Consortia Block Exemption Regulation (hereafter, the “BER”). The EC is evaluating whether the Consortia BER is still “*effective, efficient, coherent, relevant, and brings ‘EU added value’, considering developments on the market since it was last extended in 2020, particularly the challenges posed by the COVID-19 pandemic*”.¹ On the basis of this evaluation, the EC may decide to extend the period of application of the Consortia BER, or let it expire.

In this context, RBB Economics has been asked to undertake an economic assessment of the impact of the Consortia BER on competition between carriers in the liner shipping industry.

This report first provides an overview of consortia arrangements, focussing on how they operate in practice. This overview sets the scene for the economic assessment of the effect of the Consortia BER, and consortia arrangements more generally, on competition, by providing a clear description of what consortia are and what they are not, and what the Consortia BER allow members to do and what it does not. Specifically, the Consortia BER imposes conditions that limit the scope of any anticompetitive effects and ensures that the benefits from cooperation between carriers are passed-on to consumers.

¹ Call for evidence for an evaluation – Ares (2022)5649105, available at <https://ec.europa.eu/info/law/better-regulation/>.

We then provide an economic assessment of the likely impact of consortia arrangements on competition, in particular given the conditions set out in the Consortia BER, and whether the pro-competitive benefits that arise from them are likely to outweigh any adverse effects on competition that might theoretically arise. We show that the Consortia BER ensures that the net impact of consortia arrangements is likely to be overwhelmingly positive. In particular, we explain the following:

- Consortia arrangements give rise to a number of significant pro-competitive benefits. Specifically, and as noted by the EC following its past consultations, “*Consortia Block Exemption Regulation results in efficiencies for carriers that can better use vessels' capacity and offer more connections. The exemption only applies to consortia with a market share not exceeding 30% and whose members are free to price independently. In that context, those efficiencies result in lower prices and better quality of service for consumers*”.² Indeed, consortia are expected to lead to better vessel utilisation, investment in larger and more efficient vessels, increased frequency, and increased coverage of ports. Consortia are also likely to increase direct price competition between carriers which offer capacity on the same services, to the benefit of consumers.
- In contrast, the ways in which consortia arrangements permitted under the Consortia BER could, in theory, give rise to a restriction in competition are limited. Consortia members continue to price and sell their services independently and compete with one another within and outside of consortia. Further, the Consortia BER only exempts specific types of cooperation between liner shipping operators, which, in combination with the 30% market share cap, ensures competition remains effective. Indeed, it is clearly stated by the EC “*that the purpose of the 30% ceiling set in the Consortia BER is to ensure that the market exerts sufficient competition pressure on the consortia so that a fair share of their efficiency gains are passed on to consumers. [...] Moreover, in the Consortia BER context, the ceiling is also mitigated by the additional requirement of the Consortia BER that members of a consortium set their prices independently, adding additional competitive constraint of internal price competition between them*”.³
- This means that the pro-competitive benefits of consortia arrangements permitted under the Consortia BER are likely to strongly predominate. The existence of such arrangements is thus likely to give rise to substantially better outcomes for consumers than a situation in which the block exemption is not granted. This is particularly evident in light of the significant degree of competition that exists within the liner shipping industry, as is demonstrated by limited levels of concentration, recent entry, increasing levels of connectivity in international shipping networks and improved services.

Recent global developments in the form of the COVID-19 pandemic and its persistent effects provide an insightful case study into the likely beneficial effects of consortia arrangements. It has been well documented that the pandemic and the subsequent period gave rise to a

² EC press release, « Antitrust: Commission prolongs the validity of block exemption for liner shipping consortia », 24 March 2020, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_518.

³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), footnote 123, p.32.

number of significant market shocks. For example, the demand for manufactured goods grew to all-time highs both in developed and emerging countries (as a result of shifts in consumer purchasing behaviour), whilst the availability of containers was limited, and port services were significantly adversely affected by health restrictions worldwide. One effect of port and inland transportation disruptions was to cause large numbers of ships to have to wait for berths, thus reducing effective vessel capacity, even as all available ships were deployed. However, as we explain below:

- The adverse effects of the market shocks that arose due to the COVID-19 pandemic were neither exacerbated by the existence of consortia, nor would they have been dampened had consortia arrangements not been in place. These shocks were unexpected, and the capacity constraints that were experienced were the direct consequence of congestion in ports and inland, over which carriers, within or outside of consortia, have no control. Consortia members participated in adding as much capacity as was available at the time to respond to the increased demand, and absent consortia, there is no indication that individual carriers would have been in a position to increase capacity any further, especially after years of low profitability and overcapacity.
- In fact, consortia arrangements are likely to have dampened the adverse effects that arose due to the abovementioned market shocks, to the benefit of consumers. First and foremost, since consortia enables carriers to operate larger and more efficient vessels, consortia members are likely to be relatively less affected by cost increases than carriers operating individually. This stems directly from consortia's ability to achieve economies of scale that are not achievable by individual carriers. Second, because they have access to a larger pool of vessels, labour, etc., consortia services are expected to be more flexible and reactive to the disruptions than individual carriers, and as such, to be able to limit the effects of supply-chain disruptions on consumers.

A reflection on the balance between expected costs and benefits associated with not renewing the Consortia BER indicates that the risks associated with revoking the Consortia BER should not be underestimated:

- If the Consortia BER is not renewed, carriers engaged in consortia arrangements which currently benefit from the Consortia BER will need to decide whether they simply exit these agreements or whether they assess their individual agreements under Article 101(3). This can be expected to lead to significant assessment costs as indicated by respondents to the EC's previous consultation on the Consortia BER in 2018.⁴
- There is therefore a clear risk that a number of existing consortia would be dismantled (or at least that shipping lines would hesitate to enter into new consortia) thus preventing customers from enjoying the significant benefits brought by consortia agreements. Since carriers cannot downsize their vessels in the short term, it seems likely that carriers exiting consortia would reduce frequencies in order to maximise the utilisation of their vessels.

⁴ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.18-19.

- Importantly, as discussed below, one of the possible concerns associated with the Consortia BER refers to capacity restriction. However, it is unlikely that carriers would add capacity in the short run in the event that consortia arrangements are no longer exempted under the Consortia BER. This is because they would be faced with the task of operating vessels which they may well struggle to fill when operating independently. Thus, the concern that consortia are deterring firms from making capacity investments would not be addressed by not renewing the Consortia BER.
- Further, the Consortia BER does not exempt cooperation agreements covering activities which are likely to significantly restrict competition and the market share cap ensures that any exempted consortium faces sufficient external competition.
- Therefore, the expected costs of not renewing the Consortia BER would be relatively certain and likely to be passed on to consumers. By contrast, the benefits of revoking the Consortia BER, if any, would be uncertain and limited in scope.

2 Overview of the Consortia BER

The Consortia BER applies to agreements between carriers that allow the participants in such agreements to operate a joint international liner shipping service to or from one or more ports in the European Union.

In its 2016 Hapag-Lloyd/UASC decision, the EC has described consortia as follows:⁵

Consortia are operational agreements between shipping companies established on individual trades for the provision of a joint service. In a consortium, the members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides a number of vessels for operating the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity it contributes. The allocation of container slots is usually predetermined, and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of costs between the participants in a consortium.

An overview of consortia and individual carriers active on European routes, along with their respective capacity shares are provided in Annex A, and a summary of the services offered on these trade routes is provided in Annex B.

Importantly, as indicated in the quote above, the cooperation agreements between carriers that fall under the Consortia BER are limited to certain parameters of competition. In particular:

⁵ Decision M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, Recital 36.

- Members cooperate by contributing vessels, which are operated for the joint sailing of ships on which capacity is shared by these multiple carriers. The joint operation of services allows for economies of scale in the operation of vessels and the utilisation of port facilities, as noted by the EC: “*consortia allow carriers to rationalise services, achieve economies of scale and reduce costs*”.⁶
- All members of a consortium will offer capacity on the same service, *i.e.*, for the same route at the same time. Although they each offer services, members are not all required to operate vessels in each trade and instead rely on vessels operated by other consortium members. This enables small carriers to offer a wider range of services than they may have been able to operate independently, given that, as noted by the EC in past merger decisions, carriers require a certain minimum volume in order to be able to offer a regular service, which they are generally unlikely to achieve on a standalone basis.⁷
- While there is sharing of capacity on vessels and sailing schedules, no information is exchanged between consortia members beyond that which is required for the operation of the consortia (such as capacity, port calls and sailing schedules).⁸ In particular, costs are borne entirely by the vessel operator and no information on costs is shared amongst members.

Notably, members still compete when selling their allocated capacity on consortia vessels and set their prices independently. By contrast with mergers and joint-ventures, consortia promote competition both between consortia and within consortia:

- Since carriers are not compensated for unused slots, they have a strong incentive to compete with one another to maximise the utilisation of their allocated capacity in the vessel;
- Members also continue to compete with each other with respect to non-price dimensions of their offerings (*e.g.*, customer services, landside services, billing accuracy);
- Price and non-price competition is confirmed by past market investigations undertaken in the context of EC merger investigations. Customers of carriers, when consulted, point out that “*there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members*” and that “*shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price and customer service*”.⁹ Customers also indicate that they generally “*invite different shipping companies belonging to the same consortium/alliance on a certain leg of trade to bid for a contract*”.¹⁰ Head-on competition between members of the same consortium or alliance is therefore a confirmed feature of the market.

⁶ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.20.

⁷ See for instance EC Decision M.8330 - MAERSK LINE / HSDG, recital 56 or EC Decision M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 39: “*In order to offer liner shipping services on a given trade with a regular, usually weekly schedule, a certain minimum volume is required*”.

⁸ The vessel operator also naturally has access to data on actual volumes loaded and unloaded at each port the service calls at.

⁹ Case M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 42.

¹⁰ Case M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 42.

- Consortia members also compete by offering their own capacity through other services on certain routes, even when the consortium they are a part of is active on the same trades. This means that, in many trades, carriers operate vessels in services with capacity they share with their consortia partners, whilst also operating other services individually. This feature of consortia is acknowledged by the EC.¹¹ On such routes, these members thereby compete directly both with capacity brought to market by their competitors through services operated by consortia (including the consortium of which they are a member) as well as capacity brought to market by services operated by other individual carriers (including those who are members of the same consortia). By way of example, the table below shows the joint and individual services of the members of the 2M alliance between Maersk and MSC. For instance, on the Mediterranean to US East Coast / US Gulf / US West Coast route, 2M operates two services, with each of Maersk and MSC providing a number of vessels on these services. In addition, these two members of 2M also provide 9 services individually on this route.

Table 1: Number of services of 2M on routes where alliance members operate individual services

Route	Number of Services		
	2M	Maersk	MSC
North Europe to US East Coast / US Gulf / US West Coast	3	0	4
Mediterranean to US East Coast / US Gulf / US West Coast	2	2	7
Med / Far East - dedicated services	3	0	1*
Europe / Far East services calling en route in Middle East and South Asia	4	1	1*

Source: *Alphaliner*

Note: **services are operated with other another consortium outside of the 2M alliance*

Last, it is worth emphasising that the Consortia BER does not apply to consortium agreements that contain any type of hard-core competition law infringements, *i.e.*, consortium agreements that would result in price fixing, market sharing, or the limitation of capacity or sales. As such, and as further explained below, consortia falling under the Consortia BER involve very limited restrictions of competition.

3 Economic Assessment

3.1 Overview

A sensible economic (and legal) assessment of consortia arrangements must first be grounded in a coherent understanding as to how consortia could theoretically restrict competition, in particular in light of the conditions set out in the Consortia BER. This should then be weighed against the benefits to competition and/or enhancement of consumer outcomes achieved by consortia within the BER in order to determine which of these effects (*i.e.*, positive or negative)

¹¹ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.7: "However, liner shipping companies will likely have services both within consortia (VSA, SCA) and services run without any partnership".

are likely to predominate. Importantly, such an assessment can only take place with an appreciation for the relevant economic (and legal) context of the markets in which the conduct in question takes place.

With this in mind, in this section we discuss the following, in turn:

- the nature and the extent of benefits brought about by consortia, and which would not arise absent these agreements (sub-section 3.2);
- the manner through which consortia agreements may in principle restrict competition, and how material such restrictions are likely to be given the broader market context and competitive dynamics (sub-section 3.3);
- whether or not, given market circumstances and the ambit of the Consortia BER itself, the pro-competitive benefits of currently exemptible consortia arrangements are likely to predominate such that the renewal of the Consortia BER would be justified (sub-section 3.4).

3.2 The pro-competitive benefits of consortia

Put simply, by pooling capacity, consortia agreements enable carriers to operate larger, more efficient vessels, thereby delivering cost efficiencies for customers and reducing environmental footprint of shipping, while simultaneously extending service coverage. These benefits are achieved by allowing carriers to offer service frequencies that they would be unable to provide independently.

Indeed, as recognised by the EC, liner shipping services “*require significant levels of investment and therefore are regularly provided by several shipping companies cooperating in "consortia" agreements*”, “*Consortia can lead to economies of scale and better utilisation of the space of the vessels. In principle, a fair share of the benefits resulting from these efficiencies can be passed on to users of the shipping services in terms of better coverage of ports (improvement in the frequency of sailings and port calls) and better services (improvement in scheduling, better or personalised services through the use of more modern vessels, equipment and port facilities)*.”^{12,13} It is therefore well recognised that consortia agreements give rise to various pro-competitive benefits, the most significant of which are discussed below.¹⁴

First, consortia agreements enable carriers to combine their output and rely on larger vessels than they could efficiently operate alone, which leads to increased efficiency and enables the

¹² https://ec.europa.eu/commission/presscorner/detail/es/ip_20_518

¹³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.7.

¹⁴ EC Decision Case M.8330 - MAERSK LINE / HSDG, Recital 55 : “*Although the cooperation of consortium members in jointly operating container liner shipping services is likely to restrict competition, it also enables achieving certain efficiencies, notably by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, by offering greater frequencies, port calls, and, more generally, by promoting technical and economic progress. For customers to benefit from those efficiencies, however, sufficient competition should be maintained in the market. This condition is met, according to the Commission's Block Exemption Regulation ("BER"), where the market share of a consortium does not exceed 30% on a given trade and the consortium agreement does not include features likely to significantly restrict competition, such as the fixing of prices, the limitation of capacity, and the allocation of customers or markets.*”, emphasis added.

provision of shipping services at lower costs. This is due to well recognized economies of scale achieved through the sailing of larger vessels, as operating costs per unit decrease when larger output (*i.e.*, more cargo) is transported (since costs are allocated over a higher number of output units), and variable costs per unit transported, such as fuel or labour, decrease with the size of the vessel.

These efficiencies are well-recognized, and noted by the EC in its evaluation of the Consortia BER:¹⁵

In the Consortia BER and at the occasion of its last prolongation, the Commission considered that consortia have generally helped to improve the productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities. They have also helped to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity. These efficiency gains of the consortia covered by the BER were confirmed in the Public Consultation by the respondent carriers also for the period relevant for this evaluation and were not materially contested by the other stakeholders. In general, consortia allow their members to pool their vessels together and provide services or frequencies that carriers would not be able to provide on their own means. A larger pool of vessels could also allow for optimisation of the deployment of vessels to better fit size and type to the conditions of the service.

One source of cost benefit arising from operating larger vessels can be illustrated with an example: for instance, two ships of 1,000 TEU capacity would require two captains, two crews, two separate maintenance schedules and would require two distinct docking and undocking manoeuvres at each port they call at, with associated port and terminal handling costs. In contrast, a single 2,500 TEU capacity vessel would only require one captain, one crew, one maintenance schedule and would only need docking and undocking once at each port it calls at (thereby also reducing port congestion).

Further, while vessel charter rates increase with capacity, they do not do so proportionally. As shown in Table 2, a 1,000 TEU daily charter rate was 45,000\$ on the 22nd of March, while the rate for a 2,500 TEU vessel was 80,000\$: for 2.5 times the capacity, the charter rate is only 1.8 times higher. The difference is even more striking as capacity grows, with an 8,500 TEU vessel being chartered for 155,000\$ whilst a 4,000 TEU vessel costs 110,000\$. As a result, larger vessels can be chartered at lower costs, which can then be reflected into lower prices for customers.

¹⁵ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.28.

Table 2: Rates for 12-month time charters

Vessel capacity (TEU)	Daily Charter Rates, in \$/day (22 March 2022)
8,500	155,000
5,600	130,000
4,000	110,000
2,500	80,000
1,700	62,500
1,000	45,000

Source: *Alphaliner, Newsletter number 2022-12, 13/03/2022 to 22/03/2022, page 4.*
Alphaliner indicates that rates given are assessments, considering the current lack of 12-month fixtures.

Evidence of the benefits associated with operating larger vessels through consortia agreements is also provided in Table 3 below, which shows the average capacity of vessels deployed by consortia, setting apart the three main alliances (2M, Ocean Alliance and The Alliance), and compared to the average capacity of vessels sailed outside of consortia, on the same European trade routes. As can be seen from the table, on average, consortia vessels are larger than non-consortia vessels, even when the three main alliances, which operate very large ships, are not counted towards consortia vessel sizes. The difference in average size can be as large as a 1 to 3.5 ratio, such as for the Mediterranean / Far East trades (and as high as 7.5 for services on this route that are part of wider port rotation), where consortia operate vessels with a capacity of at least 8,000 TEU and up to 11,000 TEU each, and non-consortia operated vessels have a capacity of less than 3,500 TEU.

While optimal vessel sizes naturally vary across trades, consortia allow carriers to share vessels such that the most efficient vessels are employed in each particular trade. On routes where they are active, alliances can utilise even larger vessels than those used by other consortia, but the data confirms that even single trade consortia enable carriers to use larger vessels than they would be able to operate individually.

Table 3: Capacity range of single carrier, consortia, and alliances vessels in European trade routes

Route	Vessel size range (TEU)			Size ratio to single carrier vessels	
	Single carrier	Consortia	Alliance	Consortia	Alliance
Europe / Caribbeans & North Coast of South America (incl. Guyanas)	3,714 – 6,387	3,959 – 5,721	-	0.6 – 1.5	-
Europe / Far East services calling en route in Middle East and South Asia	5,608 – 7,250	8,266 – 10,926	14,429 – 17,395	1.1 – 1.9	2.0 - 3.1
Europe / Middle East or South Asia - dedicated services	5,311 – 8,044	6,442 – 9,971	-	0.8 - 1.9	-
Europe / West Coast of South America	4,387 – 6,098	6,260 – 7,545	-	1.0 - 1.7	-
Intra Mediterranean	1,347 – 1,489	1,772 – 2,123	-	1.2 - 1.6	-
Med / Far East - dedicated services	3,016 – 3,524	8,266 – 10,926	13,204 – 15,539	2.3 - 3.6	3.7 - 5.2
Med / Far East services - as part of a wider port rotation	1,940 – 3,338	10,020 – 14,568	16,047 – 22,085	3.0 - 7.5	4.8 - 11.4
Mediterranean to US East Coast / US Gulf / USWC	5,174 – 8,345	4,694 – 7,320	7,129 – 9,198	0.6 - 1.4	0.9 - 1.8
North Europe / Far East	2,270 – 4,199	4,132 – 4,395	16,027 – 19,760	1.0 - 1.9	3.8 - 8.7
North Europe / Mediterranean	4,202 – 5,629	3,353 – 4,779	-	0.6 - 1.1	-
North Europe only	1,147 – 1,225	1,432 – 1,462	-	1.2 - 1.3	-
North Europe to US East Coast / US Gulf / US West Coast	2,791 – 4,430	2,259 – 2,506	6,031 – 7,052	0.5 - 0.9	1.4 - 2.5
North Europe to USNH / Canada (St Lawrence)	2,174 – 2,606	3,135 – 4,353	-	1.2 – 2.0	-
Services Europe / Canary Islands & Morocco	993 – 1,105	1,345 – 1,847	-	1.2 - 1.9	-
Services Europe / South & East Africa	4,239 – 6,604	7,548 – 9,512	-	1.1 - 2.2	-
Services Europe / West Africa	2,791 – 3,386	2,511 – 3,838	-	0.7 - 1.4	-

Source: Alphaliner 5 Sep 2022.

Note: The figures are for the routes that have at least one consortium and single carrier active. This methodology is used because the data provided only shows the TEU range (as a min and max) and the number of vessels and does not give information on the capacity per vessel. Single carriers consist of vessels that do not operate within a consortium.

Moreover, as the EC identified in its last evaluation, for technological reasons the use of larger vessels by consortia/alliances also gives rise to, *inter alia*, variable cost reductions and environmental benefits.¹⁶ Amongst the economies of scale larger vessels benefit from is fuel efficiency, which allows a larger vessel to use less fuel for each TEU than a smaller one. For instance, Notteboom and Vernimmen estimated in 2008 that a 12,000 TEU vessel uses between 29% and 42% less fuel per TEU than a 5,000 TEU ship.¹⁷ The fuel efficiency discrepancy grows with the sailing speed, with a 5,000 TEU vessel consuming approximately as much fuel a day at a 26 knots speed as a 12,000 TEU vessel at a 24 knots speed, as demonstrated in Table 4. This means that larger vessels used for consortia services can decrease the amount of fuel used while maintaining a higher speed at sea.

Table 4: Fuel costs at sea for three types of container vessels and different service speeds (USD per day) at end-July 2006 bunker prices

Speed (kn) / Vessel size (TEU)	USD per day			USD per day per TEU			Economy per TEU vs. 5,000 TEU vessel	
	5,000	8,000	12,000	5,000	8,000	12,000	8,000	12,000
14	12,200	16,000	20,700	2.4	2.0	1.7	-18%	-29%
16	16,800	21,600	27,500	3.4	2.7	2.3	-20%	-32%
18	23,100	29,000	36,500	4.6	3.6	3.0	-22%	-34%
20	31,800	39,400	48,700	6.4	4.9	4.1	-23%	-36%
22	43,700	52,200	64,400	8.7	6.5	5.4	-25%	-39%
24	59,300	69,400	83,600	11.9	8.7	7.0	-27%	-41%
26	82,800	96,100	114,700	16.6	12.0	9.6	-27%	-42%

Source: Notteboom, T.E., Vernimmen, B., *The effect of high fuel costs on liner service configuration in container shipping*, *Journal of Transportation Geography* (2008), Table 3. Computations: RBB.

This improved fuel efficiency immediately translates into a reduction in emissions of CO₂, SO₂ (Sulphur Dioxide) and NO_x (Nitrogen oxides). CO₂ emissions, in particular, are estimated to be proportional to fuel consumption.¹⁸ This would mean that a 40% fuel consumption reduction between at 12,000 TEU vessel and 5,000 TEU vessel leads to a reduction of 40% of the associated CO₂ emissions. Even accounting for the difference in sailing speed, larger vessels are estimated to emit significantly less greenhouse gas than smaller ones, as illustrated in Table 5 below.

¹⁶ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.32: "Furthermore, the carriers argue that the Consortia BER is coherent with other EU policies. For example, vessel sharing agreements have environmental benefits through reduced consumption and lower vessel emissions, and they bring technological benefits through newer, more efficient, more technically up-to-date modern ships and improved IT systems for container tracking to meet shipper demands."

¹⁷ Notteboom, T.E., Vernimmen, B., *The effect of high fuel costs on liner service configuration in container shipping*, *Journal of Transportation Geography* (2008).

¹⁸ Psarafitis, Harilaos N. and Kontovas, Christos A; *CO2 Emission Statistics for the World Commercial Fleet*, WMU *Journal of Maritime Affairs*, 2009: "CO2 emissions in our study were calculated as follows. Fuel consumption was used as the main input, as opposed to horsepower, since fuel consumption data was the main input data that was solicited and received. Then, independent of type of fuel, one multiplies total bunker consumption (in tonnes per day) by a factor of 3.17 to compute CO2 emissions (in tonnes per day)."

Table 5: Emissions statistics by vessel segment in the liner shipping industry - 2009

Vessel segment	Feeder	Feedermax	Handysize	Sub-Panamax	Panamax	Post-Panamax
TEU range	0-500	500 - 1,000	1,000 - 2,000	2,000 - 3,000	3,000 - 4,400	< 4,400
Speed (kn)	13	16.5	20	20	21	24
CO2 emissions (gr / tonne-km)	31.5	20.0	13.7	12.2	11.8	10.8

Source: Psaraftis, Harilaos N. and Kontovas, Christos A; CO2 Emission Statistics for the World Commercial Fleet, WMU Journal of Maritime Affairs, 2009; Table 2.

Second, consortia members are also able to offer a higher frequency of sailings compared to a situation where they operate their vessels individually. In particular, in order to offer a liner shipping service with a regular schedule, firms must meet a minimum demand that justifies incurring the costs of operating the service. Further, ships need to reach high capacity utilisation in order to achieve optimum cost efficiencies. Accordingly, in a consortium, the frequency of services can be increased because by jointly operating a service and pooling their cargoes vessels can be more easily and quickly filled to full capacity.

This efficiency is also identified by the EC:¹⁹

Cargo consolidation is also an important efficiency gain. For a vessel to be operated profitably it has to reach a certain level of space utilisation; a higher utilisation also means lower cost per container. A vessel may wait in a port or call at several ports until the required level of utilisation is reached. A consortium serves the customer base of all its members allowing higher utilisation of the vessels which increases profitability and reduces cost per container. Transit times are shortened because the vessels wait less time or call at fewer ports before they reach the required level of utilisation. This means that less vessels are required to provide the same frequency of service and they can be deployed on other routes or used to increase the frequency. Cargo consolidation also facilitates investment in more modern (normally larger) cost-efficient vessels because it is easier to fill and operate them profitably.

To illustrate this point, consider a consortium with two carriers A and B, where A provides 40% of the consortium capacity, and B provides 60% of the capacity. Suppose this consortium offers a weekly service on a given trade route. If A were to individually offer the consortium's services provided today at the highest possible capacity it can achieve, vessels would need to call at ports roughly every two and half weeks instead of on a weekly basis in order to be filled up. This follows from the fact that A provides roughly 40% of the TEU capacity and vessel fleet. Holding constant demand faced by carriers and capacity levels at which sailings are made, it would take two and a half times longer for A ships to be filled up to the same extent

¹⁹ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.29.

as in the consortium, which would lead to a significant reduction in the frequency of services offered to customers.

Third, consortia, enable their members to serve more ports and offer more diversified routes, all the while maintaining frequency and offering short sailing times. These effects can be illustrated by a simple example. Suppose two carriers are active on the same route from port A to point B. There are two ports, C and D, between A and B, that could be included in the service. On its own, neither carrier would have an incentive to start serving port C or port D, to the extent that it expects the demand it faces would not be sufficient to cover the cost of adding a port call. However, if they enter into a consortium, the two carriers together generate enough volume to justify calling at port C and/or port D. This is all the more likely if, through their consortium, the two carriers decrease their costs by using a larger vessel, which makes adding calls at additional ports even more worthwhile. The consortium is therefore able to better respond to customers preferences and offer them more port call alternatives and at lower cost than they could individually.

These benefits are enhanced by the establishment of alliances, which unlike consortia covering services in one trade lane, cover multiple trades, as clearly set out by the EC:²⁰

Expanding cooperation across multiple trades increases the ability of the container liner shipping companies to deploy assets in the most appropriate and cost-efficient way. If new larger ships are introduced in one trade, existing tonnage can be more easily and efficiently redeployed or cascaded into other trades. At the same time, the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location. Moreover, by forming alliances, carriers may be better placed to secure sufficient numbers of vessels to offer a fixed or weekly schedule on a more reliable basis for the benefit of their customers who seek not only lower costs, but also require certain frequency of services.

It must be noted that these benefits cannot be achieved through other means that would be less restrictive of competition. Simple slot sharing agreements will for instance not suffice: if the risk of unused capacity is only borne by the vessel provider, they will not find it rational to increase the size of their vessels in the hope that the capacity that they are not able to sell will be filled by competing carriers through the sale of slots. While slot sharing agreements can help carriers limit unused capacity on existing ships, this would not create an incentive to invest in larger vessels given the uncertainty associated with the practice. The same would apply for increasing frequency or adding new ports to services.

In fact, consortia are the least restrictive way these benefits could be achieved. Alternatives that would yield similar results, namely joint-ventures or mergers would, in any given context,

²⁰ Decision M. 7908 - CMA CGM / NOL, Recital 25.

soften competition to a relatively greater extent, by eliminating price and non-price competition between shipping lines participating in those ventures.

As a final remark, consortia are also likely to increase the extent of direct price competition between carriers *within* a given consortium. This is because, all else equal, by operating in a consortium, carriers are selling services on the exact same vessel, thereby limiting the scope for differentiation of shipping services (e.g., dates of sailing or ports called).

To see this, consider a situation where two carriers that are not currently in a consortium operate a single sailing per week on a particular route. In such a situation, one would expect the two carriers, if behaving in a unilaterally rational way, to schedule their sailings at different days of the week, thus limiting the extent of direct competition between them. Now assume that the two shipping companies enter into a consortium with one another, whereby each is allocated half of the capacity on each of the two sailings that take place. This means that for any customers that have a preference for a particular sailing date, they will now have a choice of two providers (instead of one pre-consortium), and such providers would be expected, all else equal, to compete more strongly on price. This is the case, in particular, since consortia members are not compensated for unused capacity on the consortia vessels, and therefore have a strong incentive to compete with one another to maximise the utilisation of their allocated capacity.²¹

3.3 Potential anticompetitive effects of consortia

It should be emphasised that consortia agreements impact only a narrow set of parameters of competition. As discussed in Section 2, this is for the following reasons:

- Carriers continue to price and sell their consortium-operated services independently of each other.
- Consortia members also continue to compete with each other over non-price aspects of their offerings, such as customer service and the quality of the overall service offered to customers, including, for example, the quality of the inland transportation element of the service.
- Consortia members are not restricted from competing with each other by offering services independently even on trade routes in which the consortia to which they belong operate.
- Consortia members are able to make capacity adjustments in response to fluctuations in supply and demand.
- No other information is exchanged between consortia members beyond that which is required for the operation of the consortia, such as, capacity, port calls and sailing schedules. For instance, costs are borne entirely by the vessel operator and no

²¹ Although this effect is illustrated through the example of sailing times, a similar effect can also be expected to arise in respect of the ports that shipping lines call at on a given route. That is, absent consortia, shipping lines might be expected, all else being equal, to seek to differentiate from one another in terms of the ports at which they call, meaning that there is less direct price competition in respect of cargo owners that have a strong preference for a particular port than would arise under a consortium arrangement.

information on costs is shared amongst members. The vessel operator also naturally has access to data on actual volumes loaded and unloaded at each port of the service.

Combined, these factors indicate that any restrictions of competition associated with consortia agreements are likely to be limited.

That said, one can identify two ways through which consortia could, in theory, lead to a reduction in the intensity of competition, through their potential impact on capacity decisions or frequency.

First, consortia arrangements do impact capacity decision-making since carriers agree on port calls, sailing schedules and how much capacity to offer on those sailings. This, however, does not mean that capacity can be expected to be restricted as a result of the existence of consortia. In fact, the effect of consortia on overall capacity is *a priori* ambiguous and should thus be assessed using economic evidence.

On the one hand, consortia could allow members to offer capacity in trade routes where they would otherwise not have an incentive to operate independently, thus increasing overall capacity available on a particular trade. Further, consortia can also create an incentive for carriers to increase capacity on a given route. This is because, when considering whether to expand capacity on a particular route, carriers will assess whether that additional capacity would be sufficiently well utilised to be efficient and ultimately financially viable. In this context, expanding capacity is an inherently risky decision, since it depends on the ability of the carrier to attract sufficient extra demand. However, by sharing capacity with other consortia members, the risk of capacity under-utilisation is more limited.

On the other hand, consortia could in theory give members an incentive to reduce their own capacity, or alternatively limit increases in capacity, to the extent that this could allow them to obtain higher prices and possibly achieve higher profits through the limitation of supply. In particular, by pooling their services, consortia members have a strong incentive to rely on larger vessels than those they would employ when operating independently. Accordingly, consortia could, in theory, result in each individual member operating less capacity within the consortium than they would have supplied individually, thus reducing overall capacity in the trade route relative to the non-consortia scenario.

A hypothetical example helps illustrate this point. Consider a scenario where two carriers each independently sail a vessel with a capacity of 2,500 TEU weekly on a particular trade, and these two carriers form a consortium. When operating services jointly through the consortium, they could replace the two vessels they previously utilised with one larger vessel with a total capacity of 4,000 TEU. This would lead to a reduction of their joint supplied capacity of 20% compared to a situation without consortia.

However, carriers have no incentive to reduce capacity when forming a consortium to operate jointly unless they were each operating its vessels at low utilisation pre-consortia. In other words, to the extent that the two carriers were not able to fill their individual vessels at full capacity before the consortium, they would use the opportunity of joining their services to

adapt their supplied capacity to the actual demand they face. Such a reduction in capacity would therefore not translate into a restriction of services and higher prices but instead would allow carriers to operate more efficiently thus benefiting customers. Further, any concerns around capacity restriction due to consortia assumes that the market is not sufficiently competitive to ensure that such consortia members would remain effectively constrained. Put differently, carriers might only seek to restrict capacity if they expected that their reduction in supplied capacity would allow them to obtain higher prices, which does not hold in competitive markets (see Section 3.4 below for a discussion of the intensity of competition in the shipping industry).

The second concern relates to the variety of different sailings that are available to customers in aggregate, which could, in theory, be reduced by consortia. This is because, as described above, carriers are likely to differentiate their sailings when they operate independently (e.g., by calling at different ports, operating different schedules), as differentiation allows them to soften price competition. By contrast, when joining consortia, shipping lines jointly establish the consortium's schedule and ports of call. These decisions are negotiated and can deviate from the choice of one particular member pre-consortia.

This can be illustrated through the following hypothetical example. Suppose three carriers offer three different sailings on the same trade, on Mondays, Wednesdays and Fridays respectively, each with a capacity of 2,500 TEU. When they form a consortium, they can invest in larger ships in order to operate more efficiently and achieve costs savings. Suppose they agree to sail two 4,000 TEU vessels on Mondays and Fridays. For most customers, this change is pro-competitive: increased capacity, more efficient sailing, and head-on competition between homogeneous offerings from the three carriers is bound to decrease prices. Moreover, customers of a given carrier now have access to two different sailings rather than just one. By contrast, customers who had a strong preference for sailing on Wednesdays are negatively affected by the reduction in the variety of offerings from the consortium. That said, they would nevertheless benefit from lower prices that would result not only from the recognised efficiencies that consortia enable carriers to achieve but also, as described in Section 3.2 above, from the increase in direct competition between members, as well as access to two different sailings from the same carrier instead of one.

Again, this concern assumes that competition is not sufficiently effective such that the services offered by consortia members are not degraded by the decreasing variety of joint services relative to those operated individually (in particular since consortia agreements do not prevent shipping lines from continuing to operate services independently).

3.4 Pro-competitive effects of consortia are likely to predominate, in particular under the Consortia BER

From the outset, it is important to stress that the Consortia BER only exempts specific types of cooperation between liner shipping operators and is therefore not a *carte blanche* for cooperation agreements between carriers. In particular:

- The Consortia BER does not exempt cooperation agreements covering activities which are likely to significantly restrict competition, namely price fixing, limitation of capacity and sales (other than capacity adjustments in response to fluctuations in supply and demand) and the allocation of customer or markets.
- In addition, consortia agreements only benefit from the Consortia BER where consortia members have a combined market share below 30%.²² Any adverse competitive effects associated with consortia agreements are naturally limited by this market share cap, which ensures that any exempted consortium faces sufficient external competition.

These criteria (as well as the other conditions in Article 6 of the BER) undoubtedly limit the extent to which consortia agreements exempted by the Consortia BER can lead to anti-competitive effects. As such, there are good *a priori* reasons to expect pro-competitive effects to outweigh any restriction of competition, as indeed confirmed by the EC's previous renewals of the Consortia BER and the existence of similar exemptions in other jurisdictions. Consortia are expected to be beneficial as long as the liner shipping market remains sufficiently competitive, which is the conclusion the EC reached following its 2018-2019 evaluation of the Consortia BER.²³ The same conclusion should be reached today, since competition has remained intense between carriers. In this regard, we note the following.

First, concentration remains limited in the liner shipping industry, both overall, and on a trade-by-trade basis. As illustrated in Figure 1 below, there are no carriers with a capacity share above 20%, only three carriers with capacity shares higher than 10%, and only seven with capacity shares above 5% globally. The largest carrier holds a 18.6% capacity share worldwide, and the top 5 carriers account for approximately 60% of the world fleet capacity, while it is necessary to aggregate the 9 largest carriers worldwide to reach a cumulative capacity share above 80%, with the top 10 only holding 82.2% of the global capacity. The remaining 17.8% of worldwide capacity is distributed amongst over 300 different carriers. All these statistics indicate a relatively low level of concentration, which is confirmed by a global Herfindahl-Hirschman Index (HHI) below 1,000, as it was at the time of the latest evaluation following the wave of consolidation of 2016-2017 in the sector.²⁴

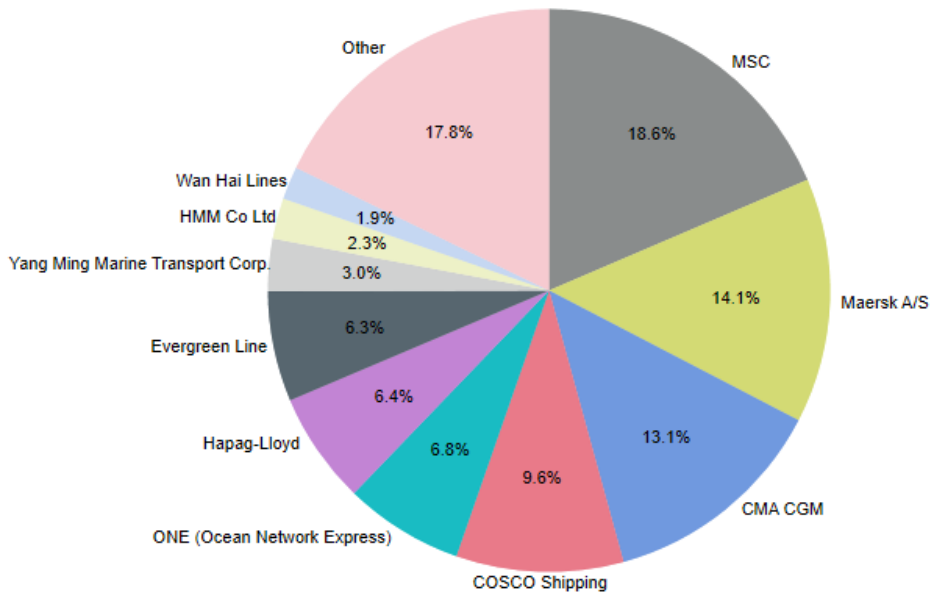
²² Subject to Article 5(3) of the Consortia BER. COMMISSION REGULATION (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia).

²³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.10-11: "*When adopted in 2009 the Consortia BER was based on and conditioned by the existence of efficiency gains and benefits to consumers, without providing any quantitative benchmarks for those two elements. However, the Consortia BER contains safeguards (some of them quantitative) for sufficient competitive pressure (both inside and outside of a consortium) in order to ensure that a fair share of the benefits resulting from consortia will be passed on to consumers. In accordance with the above, the Commission has applied the same methodology in its reviews of Consortia BER: assessing the continuous existence of efficiencies and their pass-on (absence of deterioration), rather than assessing their benchmark values. Similarly, in its last review of the Consortia BER the Commission reaffirmed that the efficiency gains and benefits, established at the adoption of that regulation, were still present at the time. The same approach and point of comparison is applied in this evaluation, where the Commission looks at what has happened or changed in the market since 2014 and assesses whether these developments raise any concern that a fair share of efficiency gains or pass-on of benefits to consumers would not materialise any more.*"

"In evaluating whether the Consortia BER is still relevant it is examined whether consortia can still be considered economically efficient cooperation that also benefits consumers. Here the point of comparison for the evaluation is the state of the industry in year 2014 (just before the current intervention), when the Commission after examination considered consortia to be economically efficient cooperation that also benefits consumers. The evaluation relies on available data to track developments, in particular since 2014 to this day"

²⁴ The acquisition of CSCL by COSCO (2016); the acquisition of APL-NOL by CMA CGM (2016); the acquisition of the United Arab Shipping Company (UASC) by Hapag Lloyd (2016); the market exit of Hanjin Shipping as a result of its

Figure 1: Global capacity shares of the top 10 carriers - 2022



Source: Alphaliner, Services database 5 Sep 2022.

Note: COSCO Shipping and OOCL have merged on 24 July 2018 although they operate as a different brand, we have considered OOCL as a part of COSCO Shipping.

Maersk and Hamburg Süd have merged on 28 April 2017 although they operate as a different brand, we have considered Hamburg Süd as a part of Maersk.

Concentration has remained stable since the last Consortia BER renewal in 2020 (based on evidence provided in 2018). As illustrated in Table 6 below, the cumulative share of global capacity held by the three larger carriers has remained similar, decreasing slightly from 63.3% to 62.3%. Likewise, the capacity share held by the ten larger carriers remained similar, increasing slightly from 81.6% to 82.2%. Interestingly, positions appear to be quite dynamic in the market, with capacity shares and ranking changing significantly between 2018 and 2022: MSC and Maersk exchanged their first and second ranks, with shares increasing and decreasing by over 3.5 percentage point each. Evergreen retains its 7th position but has closed the gap with ONE and Hapag-Lloyd. In the same period, Wan Hai almost doubled its market share, and COSCO dropped below the 10% capacity share mark. The dynamism of capacity shares demonstrates the high degree of competition between carriers.

bankruptcy (2016); the acquisition of Hamburg Süd by Maersk (2017); the formation of the ONE joint venture combining the containerised services of NYK, MOL and K Line (2017); and the acquisition of OOCL by COSCO (2017).

Table 6: Global capacity shares of top 10 carriers - 2018 and 2022 comparison

Carrier	Market share			Rank		
	2022	2018	Change	2022	2018	Change
MSC	18.6%	14.5%	+4.1 pp	1	2	-1
Maersk A/S	14.1%	17.7%	-3.6 pp	2	1	1
CMA CGM	13.1%	11.6%	+1.5 pp	3	4	-1
COSCO Shipping	9.6%	12.4%	-2.8 pp	4	3	1
ONE (Ocean Network Express)	6.9%	6.7%	+0.2 pp	5	6	-1
Hapag-Lloyd	6.4%	7.1%	-0.7 pp	6	5	1
Evergreen Line	6.3%	5.2%	+1.1 pp	7	7	=
Yang Ming Marine Transport Corp.	3.0%	2.8%	+0.2 pp	8	8	=
HMM Co Ltd	2.4%	1.8%	+0.6 pp	9	9	=
Wan Hai Lines	1.9%	1.1%	+0.8 pp	10	12	-2
ZIM	1.7%	1.5%	+0.2 pp	11	11	=
PIL	1.3%	1.8%	-0.5 pp	12	9	3
TOP 5	62.3%	63.3%	-1.0 pp			
TOP 10	82.2%	81.6%	+0.6 pp			

Source: *Alphaliner 5 Sep 2022 and Oct 2018 shares from 19 Dec 2018 RBB report.*

The limited concentration is also clear on a trade-by-trade basis. Drewry computes HHI for some European trades as shown in Table 7 below. Concentration levels are generally moderate (below 2,500).

Table 7: HHI in the main European trades – April 2022

Route	HHI
Europe-ECSA NB	3,046
Europe - South Asia WB	2,265
Europe-MidE EB	2,106
Asia-Med WB	1,599
North Europe-North America WB	1,921
Asia-North Europe WB	1,303

Source: *Drewry Maritime Research*

Furthermore, and as pointed out above, the shipping industry is characterised by ongoing entry. For instance, as set out in Table 8 below, intra-Asian carriers have entered the

transpacific and Asia-Europe trades in the last couple of years, and can price aggressively.²⁵ By way of example, Tailwind Shipping Lines is one of the 6 recent entrants in European routes. Owned by Lidl Stiftung & Co. KG (known for its discount supermarket Lidl), this shipping line has entered the market with three chartered vessels and one acquired ship on a China – Europe route.

Table 8: New entry in 2021 and 2022

Entrant	Entry date	Trade route
RifLine	2021	Asia - Europe
EShipping Gateway	2021	Asia - Europe
Fields	2021	Intra Europe
Tailwind Shipping Lines	2022	China - Europe
Allseas Shipping Company	2022	China - North Europe
Ellerman City Liners	2022	China - UK
Carrier 53'	2022	China - US

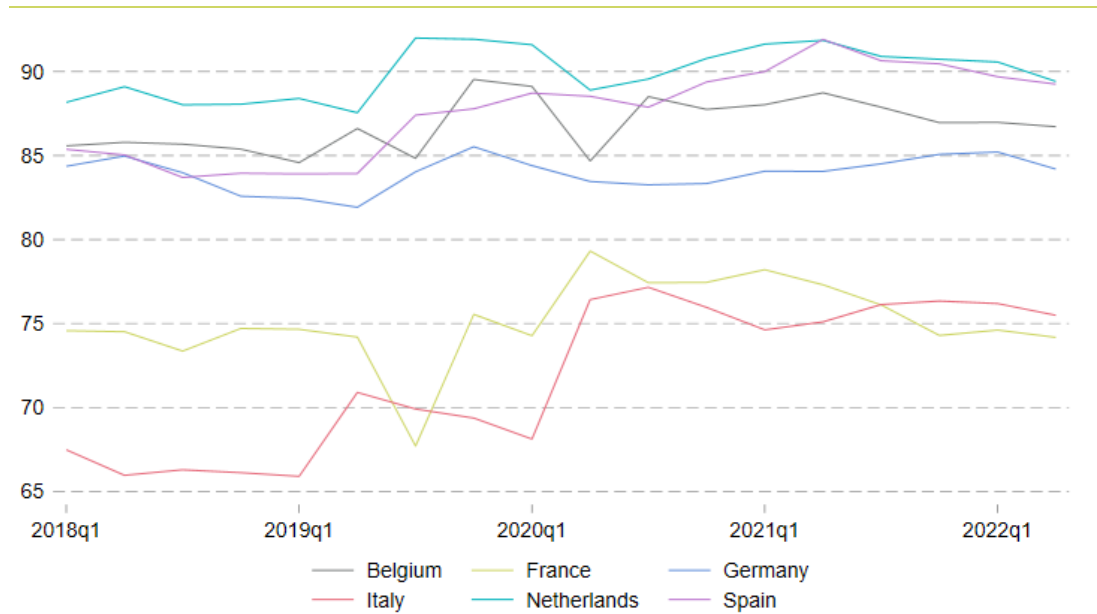
Source: *Alphaliner news*, 10 Aug 2022
Alphaliner news, 22 Jun 2022
Alphaliner news, 8 Apr 2022
Alphaliner news, 2 Feb 2022
Alphaliner news, 8 Sep 2021
Alphaliner news, 16 Aug 2021

Moreover, the evolution of UNCTAD’s Liner Shipping Connectivity Index (“LSCI”) shows that the integration of European countries in international shipping networks continues to improve over time: it implies that the number of carriers, vessels, services and/or the capacity deployed has increased over time, accommodating an increase in service quality and growth of TEUs shipped to and from these European countries.²⁶ This is illustrated below for the EU countries with the six highest LCSI (Belgium, France, Germany, Italy, the Netherlands and Spain) for which connectivity index was stable or increasing. This conclusion holds true for other EU countries, as shown in Figure 11 and Figure 12 in Annex C.

²⁵ <https://loydslist.maritimeintelligence.informa.com/LL1141962/Transpacific-bet-pays-off-for-smaller-container-lines>; <https://loydslist.maritimeintelligence.informa.com/LL1142031/Carrier-price-competition-intensifies-on-transpacific-trade>; <https://loydslist.maritimeintelligence.informa.com/LL1141272/Fast-growing-upstart-carriers-exposed-to-spot-rate-volatility>

²⁶ The LSCI is computed based on of six components, relating to (i) the number of ship calls; (ii) the capacity deployed; (iii) the number of regular services; (iv) the number of carriers offering services in the country; (v) the size of the largest vessel calling at a port of the country; and (vi) the number of different countries directly connected to the relevant country. This index is set to 100 for the maximum score obtained in 2006Q1, namely that of China.

Figure 2: Evolution of Liner Shipping Connectivity Index from Q1 2018 to Q2 2022 – EU countries with the top 6 highest LSCI



Source: UNCTAD

Further evidence of shipping lines competing effectively is shown in the table below, which lists a number of trade routes in which services were improved in 2021 and 2022, either in terms of extra vessels or additional port calls being added, from both alliance vessels (from ONE or 2M) and individual operators (from OOCL and MSC for instance). Evergreen and Italia Marittima have for instance improved their Intra-Mediterranean and Black Sea services by introducing a weekly shuttle between Greece and Israel as the “Israeli Express Service (ILX)”. They have also improved the Intra-Mediterranean service by creating a weekly connection between Italy-Croatia-Malta through a slot agreement with CMA CGM’s “Adrinaf” service. Evergreen has also separately expanded its existing Greece-Turkey service to Georgia in the Black Sea.

Table 9: New and improved trade routes opened in 2021 and 2022

Carrier	Service	Ships deployed
OOCL, COSCO	Mediterranean – West Africa	7 x 4,050 – 5,900
Ocean Network Express (ONE), CMA CGM	North Europe – East Mediterranean*	1 x 4,253
Evergreen / Italia Marittima	Intra Mediterranean and Black Sea*	1 x 1,145 – 1,164
MSC	Baltic – North Europe – USEC	6 x 4,250 – 6,700
2M	North Europe – USEC*	6 x 7,150 – 8,800
CMA CGM, Hapag-Lloyd	India / Pakistan / USEC*	8 x 3,000 – 6,000
IAL, RCL, PIL and CULines	China - India - Straits - Vietnam service	6 x 7,150 – 8,800
Wan Hai Lines	South China – Vietnam – Eastern India	4 x 1,400 – 1,700
Wan Hai Lines	China – Middle East	6 x 2,800 – 4,300

Source: *Alphaliner newsletter, 2022 Issue 12, pages 11, 13, 15*
Alphaliner newsletter, 2021, Issue 38, page 1
Alphaliner news, 4 Oct 2021
Alphaliner news, 12 Jan 2021
Alphaliner news, 8 Jul 2020
 * Improved routes

In sum, moderate levels of concentration, entry of new shipping lines and services improvements provided both by consortia and individual carriers all indicate that competition remains effective, thus further confirming that the pro-competitive benefits of consortia are likely to outweigh any possible anti-competitive effects.

4 Analysis of Recent Global Developments

4.1 Overview

The global COVID-19 pandemic and subsequent world events have given rise to a series of significant shocks to the liner shipping industry, on both the supply-side and the demand-side. Such shocks, in turn, have corresponded with significant logistical delays and rising prices, and while these effects have subsided somewhat in recent months, they are yet to return to pre-pandemic levels.

However, as we explain below, these adverse outcomes neither arose because of, nor were exacerbated by, the existence of consortia, let alone the Consortia BER. Instead, they were ultimately a product of the impact that the abovementioned shocks had on the balance of supply and demand, and would thus have arisen irrespective of the presence or absence (or extent) of consortia arrangements. In fact, there is good reason to believe that consortia arrangements may have helped to dampen the effects of some of the negative shocks experienced.

In the remainder of this section, we first provide more details regarding the shocks experienced by the liner shipping industry over the period (sub-section 4.2). We then examine the role of consortia in this context and assess whether they can have been expected to exacerbate (or cause) the shocks that were experienced, or whether in fact they may have mitigated the effects of certain of these shocks (sub-section 4.3).

4.2 Market shocks experienced due to the COVID-19 pandemic and subsequently

Since 2020, the liner shipping industry has been significantly affected by a host of market shocks. These shocks include both demand-side and supply-side shocks that arose during and due to the COVID-19 pandemic, as well as further shocks that arose due to subsequent world events. In this sub-section we briefly discuss the shocks experienced in more detail.

4.2.1 Supply-side shocks arising during the COVID-19 pandemic

The liner shipping industry experienced a range of supply-side shocks during the COVID-19 pandemic, all ultimately stemming from the resulting (i) labour shortages, (ii) shutdowns/lockdowns and/or (iii) other operational restrictions imposed by governments.

In this regard, it is important to appreciate that supply in the shipping industry is not simply a function of the amount of capacity that shipping lines employ on any given route, but it is also determined by how quickly a vessel that is ready to load/unload its cargo can do so within a port. Major disruptions to the port system due to the pandemic therefore gave rise to a significant negative shock to supply in the shipping industry.

Most obviously, certain ports were closed or required to operate at reduced capacity due to restrictions for periods of time during the pandemic. For example, in some cases port terminals were closed due to COVID-19 outbreaks – e.g., in May 2021 and August 2021, respectively, container terminals in two of China’s largest ports, Shenzhen and Ningbo-Zhoushan, closed container terminals when workers tested positive for COVID.²⁷

In other cases, even where terminals remained open there were also times when restrictions were put in place that significantly affected throughput. For example, in response to the closure of one of the container terminals in Ningbo-Zhoushan, authorities diverted vessels to other terminals in the same port, but at the same time imposed restrictions limiting the number of workers and the amount of cargo coming into the port.²⁸

However, even when ports were operating, they were often subject to significant staff shortages. Just one example is that in the beginning of 2021, around 800 dockworkers in Los Angeles and Long Beach had tested positive for COVID-19 over a short period of time. As a consequence (and also due to high levels of demand – see sub-section 4.2.2 below), container ships scheduled to dock at these ports had to wait an average of more than 7 days in March

²⁷ <https://www.ndtv.com/world-news/coronavirus-china-partly-closes-worlds-third-busiest-cargo-port-over-covid-19-case-2508701>, <https://www.ft.com/content/c3c55dca-2ee7-488a-ad68-9286822b881c>

²⁸ <https://www.automotivelogistics.media/ports-and-processors/covid-outbreaks-causing-congestion-at-ports-in-china/42196.article>

2021 (where they would have docked and been offloaded immediately in normal circumstances).²⁹ By the same token, when the Yantian port partially reopened after a coronavirus outbreak, the waiting time was over two weeks for vessels at this port.³⁰

In addition to labour shortages within ports, land-side services were also facing significant labour shortages, especially in the truck-driving industry.³¹ The absence of sufficient trucks/drivers to move containers inland resulted in further port congestion, and hence further delays.³² Moreover, it appears that these shortages are ongoing and are considered likely to persist.³³

The ultimate impact of the above was that the capacity of shipping lines was effectively reduced substantially. This is reflected in Figure 3 below, which is extracted from a report by Sea Intelligence reflecting the estimated proportion of total shipping fleet capacity that is “absorbed” (i.e., effectively removed from the market) due to port delays.

The figure, which covers the period April 2011 to April 2022, indicates that pre-pandemic the extent of fleet absorption was in the region of 2%-4%. However, this rose sharply and continually during the COVID-19 pandemic, to around 14% in early 2022 (and as of April 2022 stood at around 9%). Sea Intelligence anticipates that fleet absorption will return to pre-pandemic levels only by April 2023.³⁴

²⁹ <https://www.theguardian.com/us-news/2021/mar/11/la-ports-stalled-ships-stressed-crews-covid-buying-boom>

³⁰ <https://www.twill.net/knowledge-hub/logistic-news/yantian-port-global-supply-chains-effects/>

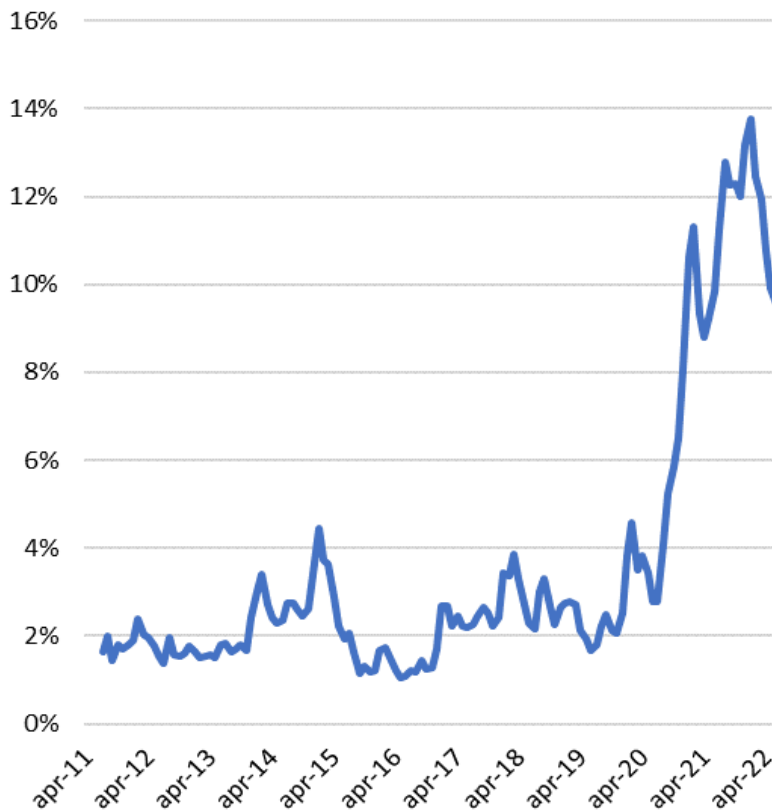
³¹ See for instance <https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics-11635950481>, <https://market-insights.upply.com/en/the-truck-driver-shortage-has-got-worse-in-2022>, <https://www.iru.org/news-resources/newsroom/driver-shortages-surge-expected-jump-40-2022-new-iru-survey>.

³² <https://maritime-executive.com/article/uk-s-trucker-shortage-begins-to-impact-ports-gas-stations-and-grocers>, https://www.foresion.net/edit/download_file.html?file_id=10&site_id=134391

³³ <https://www.forbes.com/sites/pamdanziger/2021/10/15/unclogging-the-ports-will-not-fix--the-supply-chains-even-bigger-trucking-crisis/?sh=249457b6124f>

³⁴ Sea Intelligence, 28 Aug 2022, issue 579, pages 4 and 7.

Figure 3: Absorption of global fleet due to delays, April 2011 to April 2022



Source: Sea Intelligence, 28 Aug 2022, issue 579, page 4.

Another major disruption to the shipping industry was a lack of available shipping containers. This was due, in particular, to the fact that delays and labour shortages had resulted in containers being effectively “in the wrong place at the wrong time”, significantly increasing the amount of time that containers spent on any single leg of a journey (when they should have rotated to another leg). Most significantly, empty containers were delayed when leaving Europe and North America due to labour shortages, tightened borders and restrictive port clearance procedures, whilst products awaited to be loaded in containers in Asian factories.³⁵

Importantly, although lockdowns are no longer being imposed in most countries, and economies have now reopened, it appears that a number of effects have persisted. For example, consumer demand remains strong (see also sub-section 4.2.2 below), requiring the transportation of high volumes of containers between ports.³⁶ By the same token, it appears that labour shortages have persisted across the supply chain, and in some respects are even

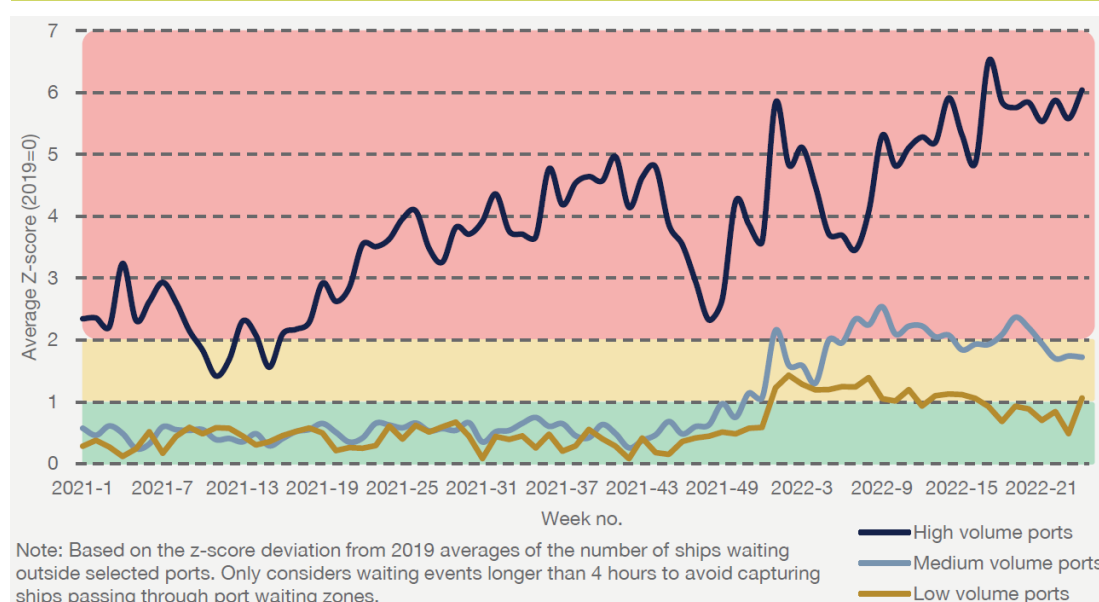
³⁵ See for instance <https://www.entrepreneur.com/en-in/news-and-trends/the-domino-effect-of-container-shortage/429154>, <https://www.hillebrandgori.com/media/publication/where-are-all-the-containers-the-global-shortage-explained>, <https://www.ship-technology.com/analysis/global-shipping-container-shortage-the-story-so-far/>, <https://www.container-xchange.com/blog/container-shortage/>, <https://www.ft.com/content/40f667ce-b979-4171-9cd1-b935d06728c4> or <https://www.investmentmonitor.ai/analysis/covid-global-shipping-container-shortage>.

³⁶ <https://www2.deloitte.com/us/en/insights/economy/us-consumer-spending-after-covid.html>

more acute than they were in 2020 and 2021 as a consequence of labour leaving the industry.³⁷

There also continue to be high levels of port congestion. Drewry’s “Container Forecaster Supply-Demand Balance” 2022Q2 issue states that “*there is no sign the port bottlenecks are going away*”, with surveyed actors not expecting any easing of congestion prior to 2023. As illustrated by the Figure 4 reproduced below, the available data do not reveal any kind of reduction in the number of vessels waiting outside major ports. The figure shows that the average z-score (which represents the number of ships waiting to berth, normalised at 0 for 2019), fluctuated between 1.5 and 5 in 2021, but was generally above 5 between March and May 2022.

Figure 4: Drewry Port Congestion Z-score Indicator (number of ships waiting)



Source: Drewry Maritime Research, 2Q 2022 Container Forecaster Supply-Demand Balance.

Furthermore, there continue to be direct effects arising from the COVID-19 pandemic. For example, the city of Shanghai was under lockdown between the 1st of April 2022 until the 1st of June 2022. Although the port remained opened, it was running at very limited capacity.³⁸ This naturally created significant congestion, not only at neighbouring ports, which had to accommodate the diverted ships and goods, but also delayed the entry into service of newbuilt container ships under construction in shipbuilding centres on Changxing Island and Pudong, which were also located inside the lockdown zone.³⁹

³⁷ <https://www.inboundlogistics.com/articles/what-does-the-labor-shortage-mean-for-your-supply-chain/>, <https://www.instituteforgovernment.org.uk/publication/supply-chains/causes>, <https://www.forbes.com/sites/jackkelly/2022/01/12/there-is-a-massive-trucker-shortage-causing-supply-chain-disruptions-and-high-inflation/?sh=6e4c320b5ec4>, <https://gcaptain.com/covid-19s-impact-on-seafarer-populations-will-be-felt-for-years-to-come/>, <https://ifa-forwarding.net/blog/sea-freight-in-europe/shortage-of-seafarers-onboard-merchant-vessels-by-2026/>,

³⁸ <https://theconversation.com/shanghai-worlds-biggest-port-is-returning-to-normal-but-supply-chains-will-get-worse-before-they-get-better-182720>

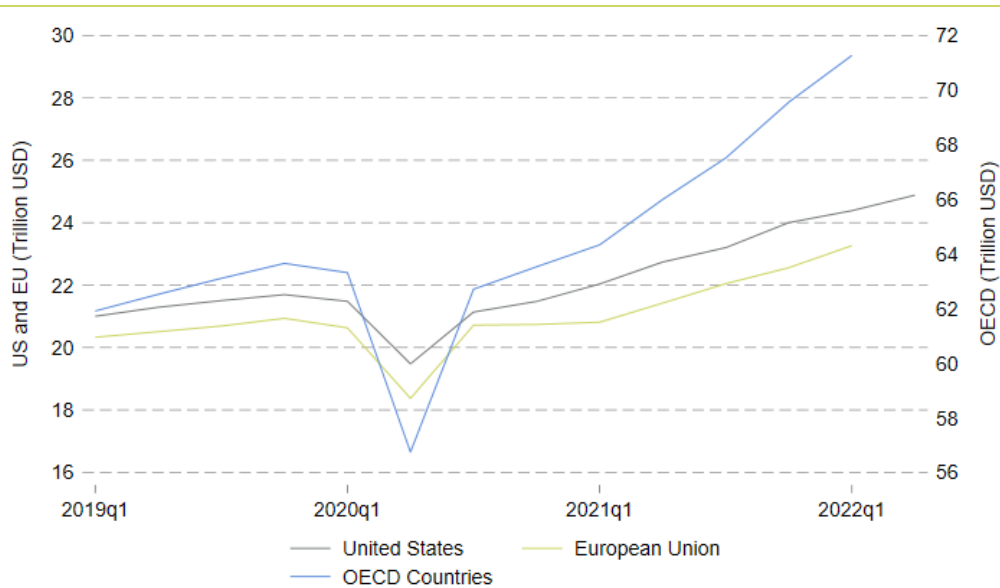
³⁹ <https://www.maritimgateway.com/shanghai-back-into-lockdown/>

4.2.2 Demand-side shocks arising during the COVID-19 pandemic

In addition to the supply-side, the COVID-19 pandemic had a significant effect on the demand for shipping liner services. This stems from the fact that ultimately demand for shipping liner services is derived from the demand for goods (as opposed to services).

On the demand side, the COVID-19 pandemic had two main effects – initially a substantial decline in demand, and then subsequently a substantial and persistent increase in demand.⁴⁰ This is evident from Figure 5 below.

Figure 5: Gross Domestic Product – Expenditure approach from Q1 2019 to Q2 2020



Source: OECD - National accounts data, gross domestic product expenditure approach. Data can be found here: <https://stats.oecd.org/>

As regards the first of these two effects, namely the substantial reduction in demand at the beginning of the pandemic, this appears to have been due to the various lockdowns and other restrictions imposed at this time. These measures effectively prevented or deterred consumers from purchasing goods, while broader uncertainties led to consumers purchasing less (and saving more).⁴¹ This gave rise to a substantial reduction in the demand for logistics services to transport goods from their point of production to their point of consumption. The same also applied to certain intermediate goods, as COVID-19 restrictions caused many producers to temporarily close or scale back their operations, thus reducing the demand for the transportation of the inputs that they require.

Consumer demand then surged sharply during the second half of 2020, and appears to have remained persistently high in excess of pre-pandemic levels. This surge in demand appears to have arisen due to the impact of extended lockdowns and other restrictions on consumer behaviour. Specifically, such measures appear to have led to consumer spend being diverted away from services (including hospitality and leisure, which were shut down for extended

⁴⁰ <https://porteconomicsmanagement.org/pemp/contents/part9/ports-and-pandemic/>
⁴¹ https://www.ecb.europa.eu/pub/economic-bulletin/focus/2021/html/ecb.ebbox202105_04~d8787003f8.en.html,
https://www.banque-france.fr/sites/default/files/billet_206_ve_finale.pdf.

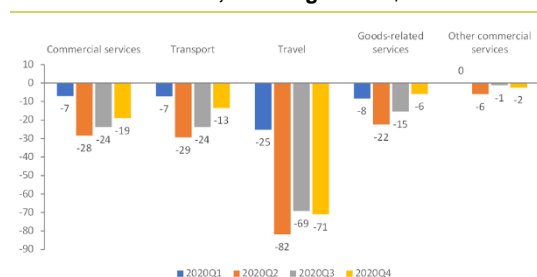
periods) to spending on manufactured goods. Government stimulus packages also appear to have contributed to this increase in demand.^{42,43} This shift from services to goods is evident from Figure 6 and Figure 7 below, which present year-on-year global growth figures (in value terms) for good and services, respectively.

Figure 6: Year-on-year growth in world manufactured goods trade, 2020Q3-2020Q4, % change in US\$ values



Source: WTO data, available here: https://www.wto.org/english/news_e/pres21_e/pr876_e.htm

Figure 7: Year-on-year growth in world commercial services trade, 2020Q1-2020Q4, % change in US\$ values



Source: WTO data, available here: https://www.wto.org/english/news_e/pres21_e/pr876_e.htm

This is also acknowledged by the World Trade Organisation, which has stated that:⁴⁴

“Lockdowns and travel restrictions caused consumers to shift spending away from non-traded services and towards goods. Innovation and adaptation by businesses and households kept economic activity from falling even more. Manufacturing supply chains were able to resume operations, and many people shifted to working remotely, generating income and demand”.

Moreover, many of those goods for which demand increased substantially, such as toys, games and sports equipment, textiles, electronics and computer equipment (see Figure 6) are generally produced in Asia and thus had to be shipped to the US and Europe.

Importantly, neither of the above developments (*i.e.*, the sharp reduction in demand or the subsequent recovery and expansion in demand) were expected. It is therefore difficult to see how their effects could have been mitigated by supply-side responses, given that they coincided with the supply-side shocks described in sub-section 4.2.1 above. Indeed, such a global event was the first of its kind in the last century, and even when it occurred, economic

⁴² See for instance <https://www.oecd.org/coronavirus/policy-responses/international-trade-during-the-covid-19-pandemic-big-shifts-and-uncertainty-d1131663/>

⁴³ See for instance <https://www.bloomberg.com/news/features/2022-01-18/supply-chain-crisis-helped-shipping-companies-reap-150-billion-in-2021?leadSource=verify%20wall>: “When the first lockdowns hit in March 2020, most observers expected the shipping industry would be decimated. But an unexpectedly sharp rebound in demand followed the initial worries of a lasting plunge. The Chinese and American economies began reopening and government stimulus payments began flowing, juicing consumer demand for goods such as exercise bikes and home-office desks. By the third quarter of 2021, world trade in goods hit a record \$5.6 trillion and was on pace for an equally solid number in the final three months of the year.”

⁴⁴ See for instance https://www.wto.org/english/news_e/pres21_e/pr876_e.htm.

forecasts of likely effects differed markedly.⁴⁵ In fact, the rate at which demand recovered appears to have been in excess of even the most optimistic scenarios.⁴⁶

Moreover, the scope for supply-side responses to surging demand would have in any event been extremely limited given the supply-side issues that were experienced at the same time (as discussed in sub-section 4.2.1 above), as well as broader capacity constraints such as port space and a restrictions affecting labour.⁴⁷ Indeed, evidence that the available capacity was deployed is provided by the very low number of idle vessels, as discussed further below.

4.2.3 Shocks experienced subsequently due to world events

In addition to the pandemic, and the broader shortage of labour in the industry, other recent developments have created additional shocks which have negatively impacted liner shipping.

First, Russia's invasion of Ukraine in early 2022 created additional disruption to the shipping industry. In particular, sailing was limited in the Black Sea, which has made detours necessary, leading to longer routes and, consequently, reduced frequency.⁴⁸ In addition, Ukrainian and Russian ports, affected by either the war or the economic sanctions, have been removed from trading routes.⁴⁹ This also resulted in some containers being trapped in Ukrainian and Russian ports.⁵⁰ Further, given that Russian and Ukrainian seafarers are estimated to account for almost 15% of the shipping industry workforce, it can be expected to further exacerbate staff shortages.⁵¹

Second, as a consequence of the conflict and the economic sanctions imposed on Russia, the price of energy has increased substantially. This is evidenced from the Figure 8 below, which shows the prices of VLSFO (Very Low Sulphur Fuel Oil) and HSFO (High Sulphur Fuel Oil (as well as the price spread across these products), over the period October 2019 to May 2022. The figure shows that the prices for both types of fuel doubled from around 500 and 400 dollars per ton in early 2021 to over twice that amount in May 2022.

⁴⁵ <https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>

⁴⁶ See for instance https://www.wto.org/english/news_e/pres21_e/pr876_e.htm, Box 1.

⁴⁷ <https://www.theguardian.com/us-news/2021/mar/11/la-ports-stalled-ships-stressed-crews-covid-buying-boom>

⁴⁸ https://unctad.org/system/files/official-document/osginf2022d2_en.pdf, <https://www.developmentaid.org/news-stream/post/142729/how-does-the-russian-invasion-of-ukraine-change-shipping-and-freight-rates>

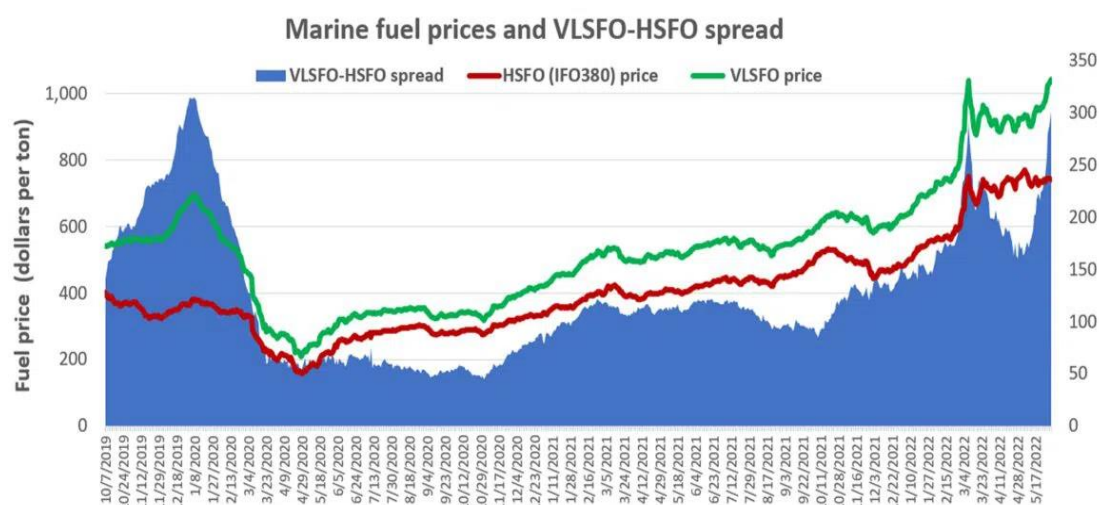
⁴⁹ <https://www.imo.org/en/MediaCentre/HotTopics/Pages/MaritimeSecurityandSafetyintheBlackSeaandSeaofAzov.aspx>,

<https://www.agcs.allianz.com/news-and-insights/expert-risk-articles/shipping-safety-22-ukraine-war.html>

⁵⁰ <https://www.logisticsinsider.in/paralyzed-container-shipping-many-ramifications-of-ukraine-russia-war/>

⁵¹ <https://www.ics-shipping.org/press-release/supply-chain-issues-will-be-compounded-by-lack-of-ukrainian-and-russian-seafarers-says-global-body-representing-international-shipping/>, <https://www.ft.com/content/2793b46d-35ab-416b-802f-30d1cd40a08d>

Figure 8: Marine fuel prices, October 2019 to May 2022



Source: American Shipper based on data from Ship & Bunker. Obtained at <https://www.freightwaves.com/news/ship-fuel-enters-uncharted-territory-as-prices-hit-new-wartime-peak>.

Note: Price is average at top 20 bunker ports.

This has evidently amounted to a significant cost shock for carriers. However, rising energy prices have also contributed to an inflationary environment more broadly, placing upwards pressure on wages and other running costs. This comes in addition to industry-specific wage inflation due to the persistent labour shortages described above.⁵²

Third, inflationary/wage pressures have led to strike action within ports.⁵³ This has inevitably resulted in disruptions to the supply chain and an effective reduction in the capacity available. For example, in August 2020, the eight-day dockers’ strike at the Port of Felixstowe, which handles almost half of the containers for the UK, delayed the handling of almost 5 billion euros worth of product.⁵⁴ Strikes (which started in September 2022) are also expected to continue at the Port of Liverpool.⁵⁵

4.3 The role of consortia during the COVID-19 pandemic

In this sub-section, we discuss the role of consortia during the COVID-19 pandemic. First, we explain the linkages between the market shocks discussed above and the observed trends in freight rates and service quality (sub-section 4.3.1). We then discuss the impact of consortia in this context, and explain that consortia are highly unlikely to have exacerbated the impact of these shocks on market outcomes (sub-section 4.3.2).

⁵² <https://maritime-executive.com/article/seafarers-to-receive-4-5-pay-increase-under-itf-employer-agreement>, <https://www.hellenicshippingnews.com/owners-urged-to-fast-track-job-offers-as-wages-rise/>, https://finance.yahoo.com/news/companies-showing-shiping-workers-perks-193317657.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLnVnbS8&guce_referrer_sig=AQAAAHxWkGCX7OtPulmurmB8TbbCnW4i94cQWxpAfaAG9pFW3RgF822j5m6eRxKPUJT_jdpHNySBSsHdDM-yBHx5WCejuEAONojEPOA9EFzfPniFAT67ff_foimU54UI4CM1arUJt9gdZq0B00nxcvnpMEIKbM3EE3qL2YWUeofdY

⁵³ <https://www.porttechnology.org/news/northern-european-ports-on-alert-as-german-dockworker-strike-to-go-ahead/>, <https://www.hellenicshippingnews.com/dockworker-strikes-at-northern-european-ports-add-to-supply-chain-disruption/>, <https://www.politico.eu/article/port-strikes-put-uk-supply-chains-under-fresh-pressure/>.

⁵⁴ <https://www.bbc.com/news/uk-england-suffolk-62685885>, <https://www.cnbc.com/2022/08/23/4point7-billion-in-trade-delayed-in-eight-day-strike-at-felixstowe.html>, <https://www.seatrade-maritime.com/containers/european-ports-feel-strain-after-felixstowe-strike>

⁵⁵ <https://www.reuters.com/world/uk/hundreds-liverpool-port-workers-strike-over-pay-sept-19-2022-09-02/>, <https://www.reuters.com/world/uk/liverpool-port-workers-plan-further-strike-over-pay-union-2022-09-29/>

4.3.1 The impact of interactions between demand and supply on outcomes

In any market, an increase in demand or a decrease in supply will lead to higher prices. That is, if demand increases and supply does not or is not able to respond, this will cause prices to rise. Equally, if supply contracts and there is not a commensurate reduction in demand, this will also cause prices to increase.

In this regard, the evidence discussed in sub-section 4.2.1 above indicates that the liner shipping industry was subject to a number of significant negative supply-shocks during the COVID-19 pandemic, as well as subsequently. In particular, these shocks effectively resulted in a reduction in capacity and/or a direct increase in carriers' costs, and can thus reasonably be expected to have driven prices upwards (as was observed).

By the same token, aside from the initial reduction in demand at the start of the COVID-19 pandemic, the demand-side shocks experienced can also be expected to have placed upwards pressure on prices. This is particularly so given the supply-side constraints described above, which can naturally be expected to have prevented a commensurate supply-side response (*i.e.*, an expansion in capacity) even if one were to assume that timely supply-side responses would have been possible (though, as we explain below, this is unlikely).

The supply-side constraints experienced would also appear likely to explain increased delays and reduced frequency and reliability. Indeed, if ports are closed or experience a shortage of labour and/or high levels of congestion, this can inevitably be expected to result in both backlogs in terms of cargo and also an inability to turn vessels around as quickly.

Overall, the elevated price levels and declines in service quality observed during the COVID-19 pandemic are thus entirely consistent with what one would expect to arise from the various supply-side and demand-side shocks that were experienced. Moreover, the fact that prices and service levels have yet to fall (revert) to pre-pandemic levels is also entirely consistent with the fact that demand continues to be elevated and there continue to be significant supply-side constraints (relative to pre-pandemic levels).

4.3.2 The impact of consortia

In order to assess the impact of consortia on the market outcomes observed during the COVID-19 pandemic and subsequently, it is important to first consider how the presence of consortia could plausibly have affected the responses of carriers to the various supply-side and demand-side shocks experienced.

If one follows this analytical framework, it is readily apparent that the role played by consortia over this period was at worst neutral, and in fact may have served to dampen the effects of some of the market shocks that occurred. That is, there is no indication that consortia/alliances' members behaved in a way that would have led to worse outcomes for customers than would have arisen in the absence of consortia that are currently exempted by the Consortia BER, and in fact the existence of such consortia may have given rise to better outcomes than would have arisen otherwise.

Starting with the potential for consortia to exacerbate the adverse effects of supply-side shocks, there are two ways in which this could theoretically have taken place, namely:

- incentivising carriers to actively restrict supply beyond those restrictions arising from the various supply-side shocks discussed above; or
- deterring carriers from expanding capacity in response to the signal of rising demand by as much as they would have done absent consortia.

In our view, both theoretical scenarios appear highly unlikely given the available evidence.

First, it is readily apparent that supply-side shocks that the liner shipping industry experienced were not the making of consortia. Indeed, factors such as port closures and delays, labour shortages in ports and in the road haulage industry, insufficient supply of containers and other frictions brought about by COVID-19 restrictions were clearly not in the control of carriers themselves.

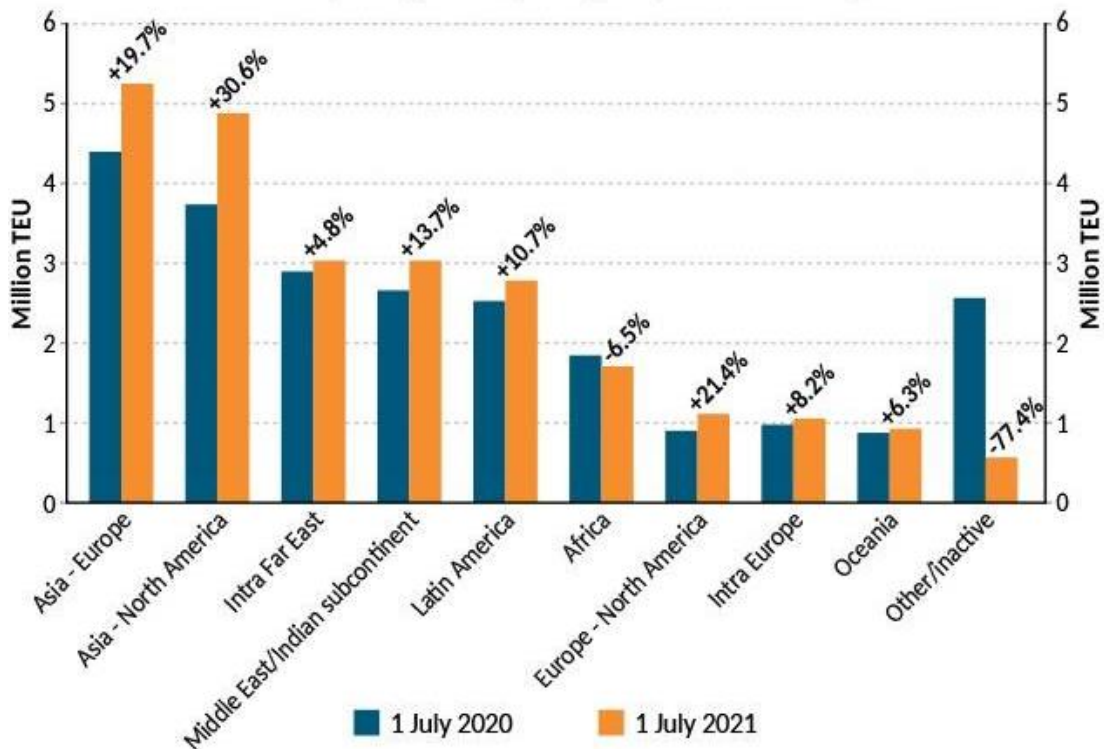
Moreover, while such bottlenecks necessarily caused significant restrictions to capacity, there is no indication in the information that we have seen that shipping lines restricted capacity further. On the contrary, it appears that carriers did seek to increase capacity as bottlenecks reduced, as shown in Figure 9 below, which presents the change in container ship capacity on major trade routes as between 1st July 2020 and 1st July 2021.

For instance, in July 2021, total capacity on the East Asia-North America route was 31% higher than the same time in 2020, while capacity on the East Asia-Europe route was 20% higher. Evidence that the available capacity was deployed is also provided by the very significant reduction in the number of idle vessels between 2020 and 2021. There is also evidence that a number of carriers (that are consortium members) started to make significant investments in new (and large) vessels during in the second half of 2020 (with such vessels expected to be delivered in 2023 and 2024).⁵⁶

This is, on its face at least, inconsistent with shipping lines actively seeking to restrict capacity.

⁵⁶ See for example, <https://container-news.com/chinese-shipyards-win-giant-container-ship-order/>, <https://maritimes.gr/en/maritimes-news/seagoing/42390-eight-more-china-s-largest-ship-finance-leasing-company-orders-bulk-carriers> and <https://container-news.com/hapag-loyd-invests-us1-billion-in-new-giant-vessels/>

Figure 9: Container ship capacity deployed on major trade routes, 1 July 2021 vs. 1 July 2020



Source: BIMCO, Alphaliner. Obtained at <https://www.bimco.org/insights-and-information/market-analysis-and-reports/20210908-container-shiping---onshore-disruption-leading-to-record-delays-and-profits>

Second, it appears highly unlikely, under any counterfactual, that carriers would have expanded capacity by a sufficiently large extent to eliminate the upwards pressure on prices arising due to the increased demand experienced during the COVID-19 pandemic. This is for two reasons, namely:

- The expansion in demand that started in the second half of 2020 was significant (demand rose to levels significantly above pre-pandemic levels) but it was unexpected and unpredictable.⁵⁷ There remains considerable uncertainty as to how demand will evolve in the near future.⁵⁸
- The nature of shipping liner operations means that it is not possible for carriers to quickly add capacity. For instance, building vessels is a lengthy process and it takes approximately two to three years to build an average size vessel, if not longer when shipyards are at capacity.⁵⁹ Moreover, securing financing from financial institutions to

⁵⁷ https://www.ecb.europa.eu/pub/economic-bulletin/focus/2020/html/ecb.ebbox202003_01~767f86ae95.en.html : "The high uncertainty surrounding the economic impact of the COVID-19 pandemic warrants an analysis based on alternative scenarios."

⁵⁸ <https://www.imf.org/-/media/Files/Publications/WEO/2022/Update/July/English/text-en.ashx>, <https://www.worldbank.org/en/news/press-release/2022/06/07/stagflation-risk-rises-amid-sharp-slowdown-in-growth-energy-markets>, <https://blogs.imf.org/2022/07/26/global-economic-growth-slows-amid-gloomy-and-more-uncertain-outlook/>.

⁵⁹ <https://www.nytimes.com/interactive/2020/06/17/business/economy/how-container-ships-are-built.html>

cover the cost of new vessels, which must be ordered in a series of at least four and can cost up to 250 million dollars each, can also take up significant time.⁶⁰

These factors combined indicate that it is highly unlikely that carriers would have been in a position to bring significant additional capacity to market in the short term in response to the increased demand that was experienced, under any scenario. Indeed, any orders placed for new vessels in late 2020 would not yet have been completed, and the associated capacity would not have yet been brought to market. By the same token, as the figure above indicates, more than 75% of idle fleet capacity as of July 2020 was eliminated by July 2021.

Moreover, there is no reason to expect that carriers would have already been planning to bring significant additional capacity to the market. Given that the COVID-19 pandemic was itself unexpected it is implausible that shipping lines would have anticipated the increase in demand that occurred, and have started ordering additional vessels ahead of time in order to incorporate it.

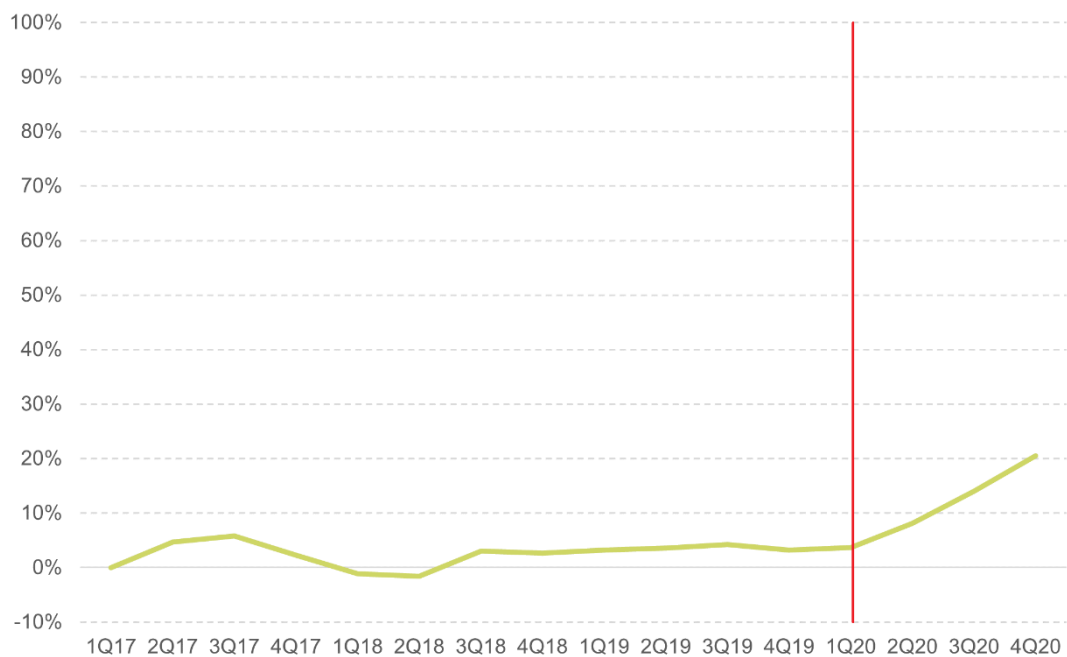
This is particularly so given that, prior to the COVID-19 pandemic, the liner shipping industry had experienced overcapacity and low margins for some time. For instance, the EC noted in the *Hapag-Lloyd/UASC* decision that “*HL submits that there is significant overcapacity in the sector globally. Several competitors responding to the Commission's market investigation also indicate that there is spare capacity in the sector.*”⁶¹

Similarly, in respect of margins, Figure 10 presents Drewry estimates of carrier EBIT (Earnings Before Interest and Taxes) margins between 2017 and 2020. The figure illustrates that prior to the COVID-19 pandemic (shown by the red vertical line) margins were always below 10%, and typically below 5% (and in some instances negative). In such a context, it is difficult to see what incentives shipping carriers would have had to invest in increasing capacity in the years leading up to the COVID-19 pandemic to meet the unprecedented levels of demand experienced during the pandemic.

⁶⁰ <https://www.offshore-energy.biz/seaspan-closes-838m-financing-for-8-new-containerships/> , <https://www.tradewindnews.com/containerships/-1bn-japanese-newbuilding-deal-pushes-ultra-large-container-ship-prices-to-record-high/2-1-1233126>

⁶¹ EC Decision M.8120 – HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 119 “*HL submits that there is significant overcapacity in the sector globally. Several competitors responding to the Commission's market investigation also indicate that there is spare capacity in the sector.*”

Figure 10: Estimated carrier industry EBIT margins



Source: Drewry Maritime Research, Q2 2022

It is also worth remembering that the incentives of carriers to invest in expanding capacity will logically be dampened if supply-side bottlenecks would in any event prevent them from effectively deploying that capacity. As explained by the CEO of Sea-Intelligence in 2021, *“Building more vessels will not materially solve the problem – partly because vessels ordered today mainly get delivered in late 2023 and in 2024, and partly because injecting more vessels will compound the bottleneck problems in ports, effectively increasing the delay time.”*⁶²

This appears to reflect a general sentiment amongst industry analysts, who consider that it is not vessels and their carrying capacity that have led to the current imbalance of demand and supply, but rather the handling ability of ports.⁶³

In addition to being unlikely to have exacerbated the supply-side shocks experienced by the industry, one would expect consortia to dampen, to at least some extent, the effects of some of the supply-side shocks experienced in the market. This is because, as explained in sub-section 3.2, consortia benefit from some efficiencies that are likely to have improved their

⁶² <https://www.investmentmonitor.ai/analysis/covid-global-shipping-container-shortage>
⁶³ <https://www.marinelink.com/news/container-shipping-record-delays-record-490495>: “Even with these extra ships, carriers are struggling to meet their scheduled departures, which leads to cancellations of sailings or port calls because the supply is not there rather than due to a lack in demand. However, adding capacity on already congested trade lanes does little to solve the fundamental problems. The limiting factor is not capacity on board ships, but rather how many containers the ports and hinterland connections can manage, as well as storage space in temporary container yards and final destinations. Adding more ships means more revenue for carriers, but also longer waiting times outside ports and increasing capacity issues on the smaller trades where the added ships are taken from. This is clear in Africa, where capacity has fallen by 6.5% year-on-year. The large year-on-year increases in capacity can also be contributed to the sharp reduction in the idle fleet compared to July 2020.” And <https://www.seatrade-maritime.com/containers/solution-container-sectors-delays-lies-landside-not-more-ships>: “Container lines are ordering significant new capacity but this will not arrive till 2023 and 2024, however, even if the vessels did arrive earlier the analyst said it would not solve the problem as the additional tonnage would just get caught up in supply chain bottlenecks on the landside.” See also <https://www.investmentmonitor.ai/analysis/covid-global-shipping-container-shortage>.

ability to cope with the disruptions faced by the industry. This flows primarily from one of the key motivations for consortia, namely the ability to use larger vessels than carriers could use individually. As explained above, larger vessels benefit from economies of scale and therefore have lower costs per unit of volume. This can be expected to have had a dampening effect on the impact of cost shocks on pricing, as the cost increase per unit is lower for large consortia vessels than for smaller individually operated vessels.

Last, as explained in sub-section 3.2, consortia enable carriers to operate with increased frequency than carriers could afford individually. This means, as a matter of logic, that carriers have greater flexibility to plan around / reallocate cargo in response to vessel-specific issues that may have arisen during the pandemic, such as COVID-19 breaking out amongst the crew of a particular vessel. This can in turn be expected to amount to a relative benefit to cargo owners who would face lesser delays than would have been the case otherwise.

Annex

A. Market shares – Capacity

The tables below provide an overview of the cooperation agreements in place on the major trade lanes as of 5 September 2022, based on the information available from Alphaliner.

The Alphaliner database provides detailed information at the level of individual services provided by carriers. The database indicates which services are operated jointly, i.e., through vessel sharing agreements (“VSAs”) and in which services slot agreements are in place. The following should be noted regarding these tables:

- Alphaliner updates the service offering of carriers on a continuous basis to account *inter alia* for seasonality in demand and the resulting adjustments in the service offering of the carriers. In addition, lighter less-structural, forms of cooperation, such as slot charter agreements, can be introduced or terminated at short term. The overview presented is hence a snap-shot picture that evolves over time.
- On Alphaliner’s services database, some services appear under multiple trade routes. For example, services operating on *Europe / Far East services calling en route in Middle East and South Asia* are included in the Middle East and South Asia trade although the service can also cover Far East. Such a service would therefore be included in both the Europe – Middle East and South Asia and the Europe – Far East table in the below. The geographic scope of the table is hence relatively broad and may include services that may not compete with each other directly. The tables do not therefore represent relevant markets for the purposes of a competition law assessment.
- Likewise, the shares presented in the tables should not be considered shares on relevant markets; these are simply the capacity shares at service level calculated with reference to the total capacity represented in the table.
- Weekly capacity data is not available for all services and hence not for all cooperation agreements.
- For completeness, the tables include a row indicating “single carrier services”, this combines the services and associated weekly capacity for those services offered by a single carrier.
- Finally, some firms which have merged are still operating in their own name and not all changes resulting from mergers and acquisitions are (yet) reflected in Alphaliner. For example, whilst OOCL has merged with COSCO, OOCL still operates as a separate brand in the market. Similarly, Hamburg Süd is mentioned as an independent line in the overview tables whilst it has been acquired by Maersk. We have manually adjusted these two instances; OOCL has been replaced as COSCO Shipping and Hamburg Süd has been replaced as Maersk to count as one carrier. No further adjustments have been made to the data, consequently smaller carriers involved in recent mergers and acquisitions may appear as separate carriers.

Notwithstanding these caveats, the summary overview below presents a good picture of cooperation within the industry that the Consortia BER seeks to cover and facilitate.

Table 10: Europe - Australasia and Oceania

Carriers	Average weekly TEU	Share of weekly TEU
MSC / CMA CGM	9,258	79.7%
CMA CGM / Marfret; Slotter: ANL	2,361	20.3%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Europe / ANZ + Oceania

Table 11: Europe - Far East

Carriers	Average weekly TEU	Share of weekly TEU
2M agreement	161,888	34.1%
OCEAN Alliance	151,900	32.0%
THE Alliance	107,817	22.7%
Single carrier services	23,976	5.1%
MSC / CMA CGM	9,258	2.0%
THE Alliance; Slotter: COSCO Shipping / Evergreen Line / CMA CGM / OOCL	8,503	1.8%
OCEAN Alliance; Slotter: Turkon Line	7,896	1.7%
China United Lines / TS Lines	2,165	0.5%
Kalypso; Slotter: Kaiso Line	681	0.1%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Med / Far East - dedicated services
Med / Far East services - as part of a wider port rotation
North Europe / Far East

Table 12: Europe - Latin America and Caribbeans

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	30,335	29.8%
CMA CGM / Hapag-Lloyd / COSCO; Slotlers: OOCL / Maersk / Hamburg Süd	10,853	10.7%
Maersk / Hamburg Süd; Slotlers: Hamburg Süd / CMA CGM / COSCO Shipping	10,589	10.4%
Maersk / Hamburg Süd / CMA CGM; Slotlers: Hamburg Süd	9,194	9.0%
MSC / Hapag-Lloyd; Slotlers: Zim	8,795	8.6%
Hapag-Lloyd / MSC	8,314	8.2%
CMA CGM / Marfret; Slotlers: COSCO Shipping	6,260	6.1%
Maersk; Slotlers: Hamburg Süd / MSC / Sealand Americas	4,500	4.4%
CMA CGM; Slotlers: Marfret / Maersk	3,683	3.6%
Maersk / Hamburg Süd; Slotlers: Hamburg Süd / Sealand Americas	3,075	3.0%
Maersk / Hamburg Süd; Slotlers: MSC / Hamburg Süd / Sealand Americas	2,640	2.6%
CMA CGM / Marfret	2,198	2.2%
Great White Fleet; Slotlers: Chiquita	1,361	1.3%

Source: Alphaliner Services Database, 5 Sep 2022.

Coverage: Europe / Caribbeans & North Coast of South America (incl. Guyanas)
Europe / East Coast of South America

Table 13: Europe - Middle East and South Asia

Carriers	Average weekly TEU	Share of weekly TEU
OCEAN Alliance	98,887	27.9%
2M agreement	74,845	21.1%
THE Alliance	47,295	13.3%
Single carrier services	45,690	12.9%
CMA CGM / COSCO / Hapag-Lloyd; Slotlers: OOCL	16,667	4.7%
ONE (Ocean Network Express) / Hapag-Lloyd / CMA CGM / OOCL; Slotlers: COSCO Shipping	9,574	2.7%
MSC / CMA CGM	9,258	2.6%
Hapag-Lloyd / ONE; Slotlers: Arkas Line / EMES / CMA CGM / COSCO Shipping / OOCL	8,786	2.5%
CMA CGM / COSCO; Slotlers: Hapag-Lloyd / ONE (Ocean Network Express)	8,517	2.4%
OCEAN Alliance; Slotlers: Turkon Line	7,896	2.2%
MSC; Slotlers: Shipping Corp. of India (SCI)	7,757	2.2%
MSC / Shg Corp. of India	7,665	2.2%
Maersk; Slotlers: APL	6,554	1.8%
Hapag-Lloyd / COSCO / OOCL / ONE / Yang Ming	5,554	1.6%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Europe / Far East services calling en route in Middle East and South Asia
Europe / Middle East or South Asia - dedicated services

Table 14: Europe - North Atlantic

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	132,585	47.4%
2M agreement	29,169	10.4%
ONE (Ocean Network Express) / Hapag-Lloyd / CMA CGM / OOCL; Slotlers: COSCO Shipping	9,574	3.4%
OCEAN Alliance / THE Alliance / Zim; Slotlers: Zim	8,544	3.1%
THE Alliance; Slotlers: ACL	8,003	2.9%
2M agreement; Slotlers: Hamburg Süd	7,715	2.8%
THE Alliance; Slotlers: APL	7,323	2.6%
Maersk; Slotlers: APL	6,554	2.3%
OCEAN Alliance	6,537	2.3%

Carriers	Average weekly TEU	Share of weekly TEU
CMA CGM / Marfret; Slotter: COSCO Shipping	6,260	2.2%
Hapag-Lloyd; Slotter: Zim	4,881	1.7%
Hapag-Lloyd / Arkas; Slotter: ONE (Ocean Network Express)	4,569	1.6%
Maersk; Slotter: Hamburg Süd / MSC / Sealand Americas	4,500	1.6%
Hapag-Lloyd / OOCL; Slotter: COSCO Shipping	4,312	1.5%
Zim; Slotter: Hapag-Lloyd	4,251	1.5%
THE Alliance; Slotter: CMA CGM	4,027	1.4%
Hapag-Lloyd / CMA CGM	3,512	1.3%
Hapag-Lloyd / CMA CGM / Arkas; Slotter: ONE (Ocean Network Express)	3,335	1.2%
MSC / Hapag-Lloyd / OOCL; Slotter: COSCO Shipping	3,227	1.2%
Hapag-Lloyd; Slotter: Maersk / CMA CGM	3,181	1.1%
Maersk / CMA CGM	3,142	1.1%
CMA CGM / Marguisa; Slotter: Naviera DAL (Direct Africa Line) / Container H Lines (CHL)	2,812	1.0%
Hapag-Lloyd / ZIM	2,436	0.9%
CMA CGM / Marfret; Slotter: ANL	2,361	0.8%
Turkon Line / Hapag-Lloyd; Slotter: X-Press Feeders Group	2,034	0.7%
COSCO / OOCL / ONE	1,808	0.6%
Maersk; Slotter: ONE (Ocean Network Express)	1,805	0.6%
GS Lines; Slotter: Maersk	1,009	0.4%

Source: Alphaliner Services Database, 5 Sep 2022.
Coverage: Mediterranean to US East Coast / US Gulf / USWC
Mediterranean to USNH / Canada (St Lawrence)
North Europe to US East Coast / US Gulf / US West Coast
North Europe to USNH / Canada (St Lawrence)
Services Europe / West Africa

Table 15: Europe - South Africa and East Africa

Carriers	Average weekly TEU	Share of weekly TEU
MSC; Slotter: Stinnes Linien	10,126	34.8%
MSC / CMA CGM	9,258	31.8%
Maersk / ONE / Hapag-Lloyd; Slotter: Deutsche-Afrika Linien (DAL)	6,912	23.8%
Maersk; Slotter: ONE (Ocean Network Express)	1,805	6.2%
Single carrier services	996	3.4%

Source: Alphaliner Services Database, 5 Sep 2022.

Coverage: Services Europe / South & East Africa

Table 16: Europe - West Africa

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	55,869	65.4%
Hapag-Lloyd / Arkas; Slotter: ONE (Ocean Network Express)	4,569	5.3%
Hapag-Lloyd / CMA CGM	3,512	4.1%
Hapag-Lloyd / CMA CGM / Arkas; Slotter: ONE (Ocean Network Express)	3,335	3.9%
CMA CGM / Marguisa; Slotter: Naviera DAL (Direct Africa Line) / Container H Lines (CHL)	2,812	3.3%
D'Amico Dry Maroc; Slotter: Maersk	2,061	2.4%
Arkas / EMES / Sealand Europe & Med; Slotter: Marguisa / Unimed Feeder Services (UFS) / Sealand Europe & Med	1,940	2.3%
Maersk; Slotter: ONE (Ocean Network Express)	1,805	2.1%
WEC Lines; Slotter: MSC	1,710	2.0%
CMA CGM / CoMaNav; Slotter: CoMaNav	1,118	1.3%
Boluda Lines; Slotter: CMA CGM	1,060	1.2%
GS Lines; Slotter: Maersk	1,009	1.2%
Arkas Spain / Nisa Maritima	946	1.1%
Containerships; Slotter: Deutsche-Afrika Linien (DAL)	925	1.1%
X-Press Feeders; Slotter: Maersk / Sealand Europe & Med / Marguisa	877	1.0%
Boluda Lines; Slotter: CMA CGM / Containerships / Arkas Line / EMES	803	0.9%
X-Press Feeders; Slotter: Zim / Hapag-Lloyd / CMA CGM / Marguisa / Arkas Line / EMES / Unimed Feeder Services (UFS)	751	0.9%
Boluda Lines; Slotter: Arkas Line / EMES	337	0.4%

Source: Alphaliner Services Database, 5 Sep 2022.

Coverage: Services Europe / Canary Islands & Morocco
Services Europe / West Africa

Table 17: Intra Europe

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	132,406	42.5%
Sealand Europe & Med; Slotter: Maersk	22,807	7.3%
Sealand E&M (Maersk) / Diamond Line (COSCO) / Hapag-Lloyd; Slotter: OOCL / Turkon Line / Borchard Lines / Maersk	8,043	2.6%
WEC Lines; Slotter: MSC	5,087	1.6%
MSC; Slotter: Zim	4,763	1.5%
MSC; Slotter: Sealand Europe & Med	4,483	1.4%
Arkas / EMES	4,377	1.4%
Zim; Slotter: Hapag-Lloyd	4,251	1.4%
CMA CGM; Slotter: Unimed Feeder Services (UFS)	4,209	1.4%
COSCO / OOCL / Yang Ming; Slotter: Borchard Lines / Diamond Line	4,096	1.3%
CMA CGM / ONE	3,645	1.2%
Containerships; Slotter: CMA CGM	3,207	1.0%
CMA CGM; Slotter: ONE (Ocean Network Express) / Unimed Feeder Services (UFS) / Metz Container Line	3,104	1.0%
Sealand Europe & Med; Slotter: Hamburg Süd / Maersk	3,055	1.0%
CMA CGM / COSCO; Slotter: X-Press Feeders Group / Maersk / Sealand Europe & Med / Metz Container Line / Diamond Line / Unimed Feeder Services (UFS) / OOCL	2,812	0.9%
Arkas / Hapag-Lloyd; Slotter: CMA CGM	2,737	0.9%
CMA CGM / COSCO / Evergreen (Italia Marittima); Slotter: X-Press Feeders Group / Diamond Line / Arkas Line / EMES / Hapag-Lloyd / Italia Marittima SpA / Tarros / Unimed Feeder Services (UFS)	2,567	0.8%
Arkas / EMES / Sealand Europe & Med; Slotter: Marguisa / CMA CGM	2,558	0.8%
Arkas / EMES / Sealand Europe & Med / CMA CGM; Slotter: Marguisa / Hapag-Lloyd / Zim / Turkon Line / Maersk	2,472	0.8%
T.O. Delta SpA; Slotter: Sealand Europe & Med / Maersk	2,178	0.7%
CMA CGM; Slotter: X-Press Feeders Group	2,056	0.7%
Arkas / EMES; Slotter: Sealand Europe & Med / Hapag-Lloyd / CMA CGM / Zim / Maersk	2,023	0.6%
Turkon / Admiral Container Lines; Slotter: Carmel Shipping	1,878	0.6%
MSC; Slotter: WEC Lines	1,876	0.6%
Arkas / EMES / Turkon Line; Slotter: Zim / Tarros / CMA CGM / Admiral Container Lines	1,860	0.6%

Carriers	Average weekly TEU	Share of weekly TEU
COSCO; Slotter: OOCL / Diamond Line / Yang Ming Marine Transport Corp.	1,791	0.6%
Hapag-Lloyd; Slotter: ONE (Ocean Network Express) / Unimed Feeder Services (UFS)	1,732	0.6%
Unimed (UFS) (Unifeeder); Slotter: X-Press Feeders Group / Sealand Europe & Med / Metz Container Line / Maersk	1,730	0.6%
Unifeeder; Slotter: COSCO Shipping / OOCL	1,718	0.6%
Samskip; Slotter: UniFeeder / BG Freight	1,612	0.5%
CMA CGM; Slotter: Evergreen Line / Italia Marittima SpA / X-Press Feeders Group	1,611	0.5%
Arkas / EMES; Slotter: Sealand Europe & Med / CMA CGM / Hapag-Lloyd / Zim / Turkon Line	1,604	0.5%
X-Press Feeders; Slotter: Evergreen Line / OOCL / CMA CGM	1,600	0.5%
X-Press Feeders; Slotter: Sealand Europe & Med / Maersk	1,597	0.5%
Unifeeder; Slotter: OOCL / Sealand Europe & Med / Hapag-Lloyd / CMA CGM	1,578	0.5%
Evergreen / Arkas; Slotter: Sealand Europe & Med / Maersk / Zim / Hapag-Lloyd / Unimed Feeder Services (UFS)	1,531	0.5%
Tarros / Arkas / EMES; Slotter: Maersk / Sealand Europe & Med / Turkon Line	1,529	0.5%
CNAN / Arkas; Slotter: Tarros / Linea Messina / Arkas Line / EMES	1,528	0.5%
COSCO; Slotter: OOCL / X-Press Feeders Group / Yang Ming Marine Transport Corp.	1,496	0.5%
Evergreen (Italia Marittima); Slotter: Unimed Feeder Services (UFS)	1,471	0.5%
Unifeeder; Slotter: ONE (Ocean Network Express) / Sealand Europe & Med	1,467	0.5%
Arkas / EMES; Slotter: Evergreen Line / Italia Marittima SpA / Zim	1,445	0.5%
Hapag-Lloyd; Slotter: ONE (Ocean Network Express)	1,440	0.5%
COSCO; Slotter: UniFeeder / CMA CGM	1,436	0.5%
Unifeeder; Slotter: Samskip / CMA CGM / Sealand Europe & Med / Hapag-Lloyd / Diamond Line / Evergreen Line / COSCO Shipping / OOCL	1,421	0.5%
OOCL; Slotter: Evergreen Line / Yang Ming Marine Transport Corp. / X-Press Feeders Group / Diamond Line / COSCO Shipping	1,421	0.5%
Sealand Europe & Med; Slotter: Maersk / Metz Container Line / Hamburg Süd	1,368	0.4%
COSCO; Slotter: Metz Container Line / CMA CGM / Unimed Feeder Services (UFS)	1,349	0.4%
Yang Ming / COSCO; Slotter: Diamond Line / COSCO Shipping	1,296	0.4%

Carriers	Average weekly TEU	Share of weekly TEU
COSCO; Slotlers: OOCL / Yang Ming Marine Transport Corp.	1,296	0.4%
Arkas / EMES; Slotlers: Evergreen Line / Italia Marittima SpA / CMA CGM / Zim	1,164	0.4%
Unimed (UFS) (Unifeeder); Slotlers: Sealand Europe & Med	1,145	0.4%
Unimed (UFS) (Unifeeder); Slotlers: Evergreen Line / Italia Marittima SpA	1,145	0.4%
Metz Container Line; Slotlers: COSCO Shipping / X-Press Feeders Group / Unimed Feeder Services (UFS) / CMA CGM	1,128	0.4%
Tarros / Arkas / EMES / CMA CGM; Slotlers: X-Press Feeders Group / Brintermed / Linea Messina	1,111	0.4%
CNAN / Arkas; Slotlers: Arkas Line / EMES	1,081	0.3%
Unifeeder; Slotlers: Hapag-Lloyd / Sealand Europe & Med / CMA CGM / OOCL / Evergreen Line	1,052	0.3%
X-Press Feeders; Slotlers: Mann Lines / ONE (Ocean Network Express) / Samskip	1,036	0.3%
Unifeeder; Slotlers: CMA CGM / COSCO Shipping / OOCL	1,036	0.3%
BG Freight French Service; Slotlers: Maersk / Sealand Europe & Med / CMA CGM	1,036	0.3%
BG Freight; Slotlers: Eucon / Maersk / Sealand Europe & Med	1,036	0.3%
Unifeeder; Slotlers: ONE (Ocean Network Express) / COSCO Shipping / OOCL / CMA CGM	1,030	0.3%
Unifeeder; Slotlers: OOCL / COSCO Shipping	1,025	0.3%
Unifeeder; Slotlers: Containerships / Hapag-Lloyd	1,025	0.3%
Unifeeder; Slotlers: Hapag-Lloyd / OOCL / CMA CGM	1,024	0.3%
Zim / COSCO; Slotlers: Diamond Line	998	0.3%
X-Press Feeders; Slotlers: Containerships / Yang Ming Marine Transport Corp. / ONE (Ocean Network Express) / Samskip	992	0.3%
A&A Shipping & Logistics; Slotlers: HMM Co Ltd / Hapag-Lloyd	977	0.3%
Unifeeder; Slotlers: ONE (Ocean Network Express) / Sealand Europe & Med / CMA CGM	949	0.3%
COSCO; Slotlers: X-Press Feeders Group / Evergreen Line / OOCL / CMA CGM	925	0.3%
Containerships; Slotlers: UniFeeder	907	0.3%
BG Freight; Slotlers: CMA CGM / Containerships / Maersk / Sealand Europe & Med	903	0.3%
Unifeeder; Slotlers: Containerships / CMA CGM	889	0.3%
Borchard / Gracechurch	868	0.3%

Carriers	Average weekly TEU	Share of weekly TEU
Containerships; Slotlers: Samskip / CMA CGM	862	0.3%
X-Press Feeders; Slotlers: Maersk / Sealand Europe & Med	862	0.3%
Samskip; Slotlers: SCS Multiport	835	0.3%
BG Freight; Slotlers: UniFeeder / Sealand Europe & Med / Maersk / CMA CGM	822	0.3%
X-Press Feeders; Slotlers: COSCO Shipping / OOCL / ONE (Ocean Network Express)	822	0.3%
Unimed (UFS) (Unifeeder); Slotlers: Metz Container Line / X-Press Feeders Group / CMA CGM / Hapag-Lloyd	819	0.3%
Unifeeder; Slotlers: ONE (Ocean Network Express) / CMA CGM	809	0.3%
JSV Logistic / CMA CGM; Slotlers: Marguisa	808	0.3%
Samskip; Slotlers: UniFeeder	803	0.3%
X-Press Feeders; Slotlers: OOCL / Diamond Line / COSCO Shipping / Evergreen Line / CMA CGM	800	0.3%
COSCO (Diamond Line); Slotlers: OOCL	716	0.2%
X-Press Feeders; Slotlers: Unimed Feeder Services (UFS) / Maersk / Sealand Europe & Med	700	0.2%
Blue Ice Lines Co Ltd; Slotlers: Zim	698	0.2%
Unifeeder; Slotlers: Sealand Europe & Med / CMA CGM	660	0.2%
X-Press Feeders; Slotlers: OOCL / COSCO Shipping	607	0.2%
BG Freight; Slotlers: CMA CGM / Sealand Europe & Med / Eucon	602	0.2%
Unifeeder; Slotlers: ACL	508	0.2%
X-Press Feeders; Slotlers: Sealand Europe & Med / CMA CGM	508	0.2%
Mann Lines; Slotlers: X-Press Feeders Group	508	0.2%
X-Press Feeders; Slotlers: Evergreen Line / Italia Marittima SpA / Zim / Maersk / Sealand Europe & Med / CMA CGM / COSCO Shipping	485	0.2%
Maersk; Slotlers: Sealand Europe & Med	431	0.1%
Milaha; Slotlers: Hapag-Lloyd	411	0.1%
Metz Container Line; Slotlers: Unimed Feeder Services (UFS) / CMA CGM	394	0.1%
White Line; Slotlers: Admiral Container Lines / Marguisa / X-Press Feeders Group	384	0.1%

Carriers	Average weekly TEU	Share of weekly TEU
X-Press Feeders; Slotter: Hapag-Lloyd / Sealand Europe & Med / Maersk	289	0.1%
Kalypso; Slotter: Kaiso Line	245	0.1%

Source: *Alphaliner Services Database, 5 Sep 2022.*

Coverage: *Intra Mediterranean
North Europe / Mediterranean
North Europe only*

B. Summary of services

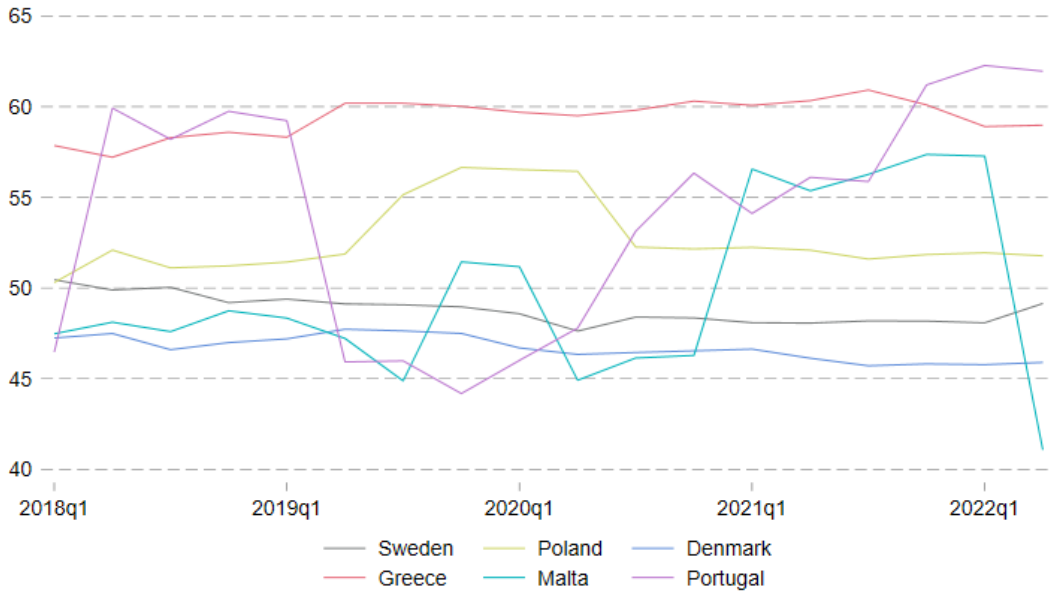
Table 18: Number of services on European trade routes

Trade route	Number of services offered by consortia carriers	Number of services offered by individual carriers
Europe / ANZ + Oceania	2	
Europe / Caribbeans & North Coast of South America (incl. Guyanas)	5	9
Europe / East Coast of South America	5	
Europe / Far East services calling en route in Middle East and South Asia	17	1
Europe / Middle East or South Asia - dedicated services	7	12
Europe / West Coast of South America	2	4
Intra Mediterranean	24	127
Med / Far East - dedicated services	11	4
Med / Far East services - as part of a wider port rotation	10	2
Mediterranean to US East Coast / US Gulf / USWC	9	11
Mediterranean to USNH / Canada (St Lawrence)		5
North Europe / Far East	20	4
North Europe / Mediterranean	4	8
North Europe only	3	100
North Europe to US East Coast / US Gulf / US West Coast	10	6
North Europe to USNH / Canada (St Lawrence)	3	2
Services Europe / Canary Islands & Morocco	3	18
Services Europe / South & East Africa	2	4
Services Europe / West Africa	6	25
Total	143	342

Source: Alphaliner, Services database 5 Sep 2022.

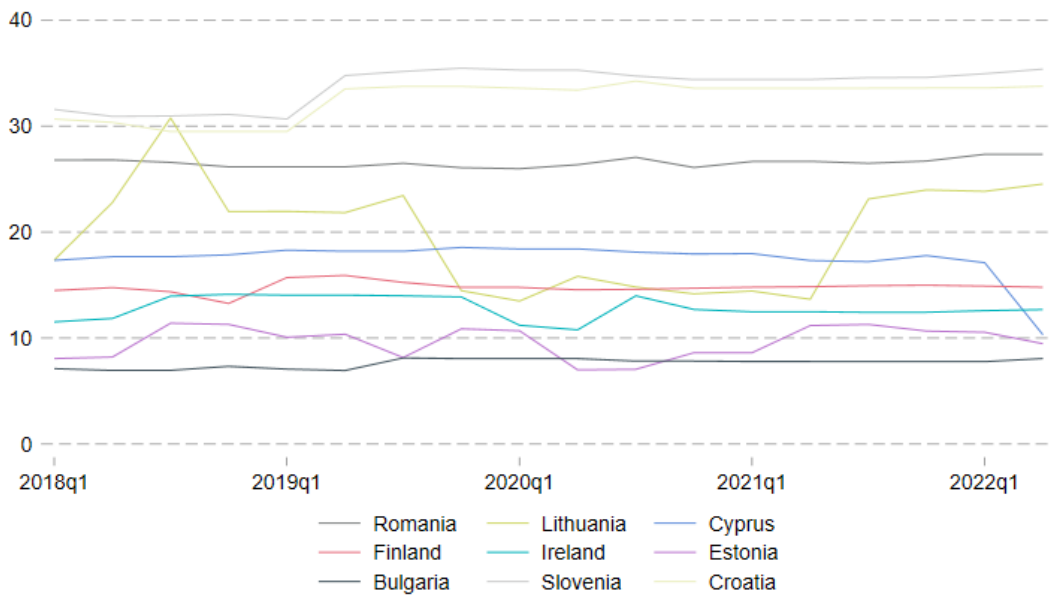
C. Liner Shipping Connectivity Index of remaining European countries

Figure 11: Evolution of LSCI from Q1 2018 to Q2 2022 – EU countries with the top 7 to 12th highest LSCI



Source: UNCTAD

Figure 12: Evolution of LSCI from Q1 2018 to Q2 2022 – EU countries with the top 13 to 21st highest LSCI



Source: UNCTAD

ANNEX 2

**Report by RBB Economics, 13 October 2022,
*Liner Shipping Consortia Block Exemption Regulation,
An introductory note prepared at the request of the World Shipping Council***

Liner Shipping Consortia Block Exemption Regulation

An introductory note prepared at the
request of the World Shipping Council

RBB Economics, 13 October 2022

1 Introduction and Executive Summary

The Competition and Markets Authority (“CMA”) is set to commence a review of the Consortia Block Exemption Regulation (“BER”), which was retained in UK law following the UK’s exit from the European Union, in order to provide a recommendation to UK government on whether to maintain it or otherwise vary it upon its expiration on 25 April 2024. In this context, the World Shipping Council (“WSC”) has asked RBB Economics to provide an introductory note on the Consortia BER and the UK liner shipping industry.

This note is structured as follows.

- First, we provide an overview of consortia arrangements under the Consortia BER, focussing on how they operate in practice. We also discuss the underlying motivations for consortia arrangements from the perspective of carriers.
- Second, we present relevant data on the UK liner shipping industry illustrating the extent of cooperation between carriers, capacities deployed and the overall connectivity of the UK.

2 Overview of the Consortia BER

2.1 Overview

In this section we provide a brief introduction to the Consortia BER. We first describe the nature and scope of the Consortia BER. We then briefly set out some of the key motivations behind shipping lines seeking to engage in consortia arrangements.

2.2 Description of the Consortia BER

The Consortia BER applies to agreements between carriers that allow the participants in such agreements to operate a joint international liner shipping service to or from one or more ports in the European Union and the UK.

For example, in its 2016 Hapag-Lloyd/UASC decision, the European Commission (“EC”) described consortia as follows:¹

Consortia are operational agreements between shipping companies established on individual trades for the provision of a joint service. In a consortium, the members jointly agree on the capacity that will be offered by the service, on its schedule and ports of call. Generally, each party provides a number of vessels for operating the joint service and in exchange receives a number of container slots across all vessels deployed in the joint service based on the total vessel capacity it contributes. The allocation of container slots is usually predetermined, and shipping companies are not compensated if the slots attributed to them are not used. The costs for the operation of the service are generally borne by the vessel providers individually so that there is limited to no sharing of costs between the participants in a consortium.

Importantly, as indicated in the quote above, the cooperation agreements between carriers that fall under the Consortia BER are limited to certain parameters of competition. In particular:

- Members cooperate by contributing vessels, which are operated for the joint sailing of ships on which capacity is shared by these multiple carriers. The joint operation of services allows for economies of scale in the operation of vessels and the utilisation of port facilities, as noted by the EC: “*consortia allow carriers to rationalise services, achieve economies of scale and reduce costs*”.²
- All members of a consortium will offer capacity on the same service, i.e., for the same route at the same time. Although they each offer services, members are not all required to operate vessels in each trade and instead rely on vessels operated by other consortium

¹ Decision M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, Recital 36.

² COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.20.

members. This enables small carriers to offer a wider range of services than they may have been able to operate independently, given that carriers require a certain minimum volume in order to be able to offer a regular service, which they are generally unlikely to achieve on a standalone basis.³

- While there is sharing of capacity on vessels and joint setting of sailing schedules, no information is exchanged between consortia members beyond that which is required for the operation of the consortia (such as capacity, port calls and sailing schedules).⁴ In particular, unless consortia members jointly procure any ancillary services as permitted by the Consortia BER, costs are borne entirely by the vessel operator and no information on costs or prices is shared amongst members.

Under consortia arrangements that fall under the Consortia BER, members still compete when selling their allocated capacity on consortia vessels and set their prices independently. Moreover:

- Carriers are not compensated for unused slots, and hence have a strong incentive to compete with one another to maximise the utilisation of their allocated capacity in the vessel.
- Members also continue to compete with each other with respect to non-price dimensions of their offerings (e.g., customer services, landside services, billing accuracy).

That members of the same consortium or alliance continue to compete head on has been confirmed as a feature of the market in previous EC merger investigations. For example, it has been highlighted that customers of carriers, when consulted, point out that “*there is a degree of competition not only between consortia/alliances but also within consortia/alliances between their respective members*” and that “*shipping companies regrouped within a consortium/alliance may notably still compete on factors such as price and customer service*”.⁵ Customers were also found to generally “*invite different shipping companies belonging to the same consortium/alliance on a certain leg of trade to bid for a contract*”.⁶

Furthermore, consortia members also compete by offering their own capacity through other services on certain routes, even when the consortium they are a part of is active on the same trades. This means that, on certain trades, carriers operate vessels in services with capacity they share with their consortia partners, whilst also operating other services individually. Again, this has been acknowledged previously by the EC.⁷

³ See for instance EC Decision M.8330 - MAERSK LINE / HSDG, recital 56 or EC Decision M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 39: “*In order to offer liner shipping services on a given trade with a regular, usually weekly schedule, a certain minimum volume is required*”.

⁴ The vessel operator also naturally has access to data on actual volumes loaded and unloaded at each port the service calls at.

⁵ Case M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 42.

⁶ Case M.8120 - HAPAG-LLOYD / UNITED ARAB SHIPPING COMPANY, recital 42.

⁷ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.7: “*However, liner shipping companies will likely have services both within consortia (VSA, SCA) and services run without any partnership*”.

On such routes, individual carriers therefore offer services which compete directly both with capacity brought to market by their competitors through services operated by consortia (including the consortia of which they are members) and with capacity brought to market by services operated by other individual carriers (including those who are members of the same consortium as they are).

By way of example, Table 1 below shows the joint and individual services of the members of the 2M alliance between Maersk and MSC. The table indicates, for instance, that on the Mediterranean to US East Coast / US Gulf / US West Coast route, 2M operates two services, with each of Maersk and MSC providing a number of vessels on these services. In addition, these two members of 2M also provide 9 services individually on this route.

Table 1: Number of services of 2M on routes where alliance members operate individual services

Route	Number of Services		
	2M	Maersk	MSC
North Europe to US East Coast / US Gulf / US West Coast	3	0	4
Mediterranean to US East Coast / US Gulf / US West Coast	2	2	7
Med / Far East - dedicated services	3	0	1*
Europe / Far East services calling en route in Middle East and South Asia	4	1	1*

Source: *Alphaliner*

Note: *services are operated with other another consortium outside of the 2M alliance

Last, it is worth emphasising that the Consortia BER does not apply to consortium agreements that contain any type of hard-core competition law infringements, i.e., consortium agreements that would result in price fixing, market sharing, or the limitation of capacity or sales. As such, and as further explained below, consortia falling under the Consortia BER involve very limited restrictions of competition.

2.3 The motivations behind consortia arrangements in the liner shipping industry

The liner shipping industry is characterised by significant fixed costs and economies of scale. This serves as the central motivation behind consortia arrangements, which enable shipping lines to essentially pool capacity. In this way, consortia arrangements give rise to three main sources of benefit for shipping lines. It is worth noting that these efficiencies also give rise to benefits for consumers.

First, as a consequence of being able to pool capacity, consortia agreements enable carriers to use larger vessels than they could efficiently operate alone.⁸ This leads to increased efficiency and enables the provision of shipping services at lower costs. This is due to both the spreading of fixed costs over greater volumes and reductions in per unit variable costs such as fuel and labour, which decrease with the size of a vessel.

⁸ Please refer to Annex A for a comparison of vessel sizes for single carriers and consortia on trade routes calling at UK ports.

These cost benefits are well-documented and have been identified by the EC in its own previous evaluations of the Consortia BER. For instance, the EC has previously noted:

“In the Consortia BER and at the occasion of its last prolongation, the Commission considered that consortia have generally helped to improve the productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities. They have also helped to promote technical and economic progress by facilitating and encouraging greater utilisation of containers and more efficient use of vessel capacity. These efficiency gains of the consortia covered by the BER were confirmed in the Public Consultation by the respondent carriers also for the period relevant for this evaluation and were not materially contested by the other stakeholders.”⁹

The cost benefit (in terms of spreading fixed costs) of operating larger vessels can be illustrated with an example: for instance, two ships of 1,000 Twenty-foot-Equivalent Units (“TEU”) capacity would require two captains, two crews, two separate maintenance schedules and would require two distinct docking and undocking maneuvers at each port they call at, with associated port and terminal handling costs. In contrast, a single 2,500 TEU capacity vessel would only require one captain, one crew, one maintenance schedule and would only need docking and undocking once at each port it calls at. While optimal vessel sizes naturally vary across trades, consortia allow carriers to share vessels such that the most efficient vessel sizes are employed in each particular trade.

Moreover, the use of larger vessels by consortia/alliances also gives rise to economies of scale and, in turn, environmental benefits. Again this, has been previously acknowledged by the EC.¹⁰

For example, larger vessels benefit from greater fuel efficiency, which means that the cost of fuel per TEU is lower than for smaller vessels. For instance, Notteboom and Vernimmen estimated in 2008 that a 12,000 TEU vessel uses between 29% and 42% less fuel per TEU than a 5,000 TEU ship when sailing at the same speed.¹¹ The fuel efficiency discrepancy between small and large vessels grows with the sailing speed, as a 12,000 TEU vessel consumes 29% less fuel per day per TEU at a speed of 14 kn, while the fuel economy reaches 42% at a 26 kn speed, as illustrated in Annex B. This means that larger vessels used for

⁹ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.28.

¹⁰ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.32: “Furthermore, the carriers argue that the Consortia BER is coherent with other EU policies. For example, vessel sharing agreements have environmental benefits through reduced consumption and lower vessel emissions, and they bring technological benefits through newer, more efficient, more technically up-to-date modern ships and improved IT systems for container tracking to meet shipper demands.”

¹¹ Notteboom, T.E., Vernimmen, B., The effect of high fuel costs on liner service configuration in container shipping, Journal of Transportation Geography (2008).

consortia services can decrease the amount of fuel used while maintaining a higher speed at sea (and therefore leading to lower sailing times and higher frequency of service).

Using larger vessels not only results in lower per unit variable costs, but improved fuel efficiency also translates into a reduction in emissions of CO₂, SO₂ (Sulfur Dioxide) and NO_x (Nitrogen oxides). For instance, in the case of CO₂, emissions decline in proportion to fuel consumption.¹² This means that a 40% reduction in fuel consumption reduction (e.g., the difference in fuel consumption between a 12,000 TEU vessel and a 5,000 TEU vessel) would lead to a 40% reduction of CO₂ emission per TEU. Even accounting for the difference in sailing speed, larger vessels are estimated to emit significantly less greenhouse gas than smaller ones, as illustrated in Table 2 below.

Table 2: Emissions statistics by vessel segment in the liner shipping industry - 2009

Vessel segment	Feeder	Feedermax	Handysize	Sub-Panamax	Panamax	Post-Panamax
TEU range	0-500	500 - 1,000	1,000 - 2,000	2,000 - 3,000	3,000 - 4,400	< 4,400
Speed (kn)	13	16.5	20	20	21	24
CO ₂ emissions (gr / tonne-km)	31.5	20.0	13.7	12.2	11.8	10.8

Source: Psaraftis, Harilaos N. and Kontovas, Christos A; CO₂ Emission Statistics for the World Commercial Fleet, WMU Journal of Maritime Affairs, 2009; Table 2.

Second, consortia arrangements enable members to offer a higher frequency of sailings compared to a situation where they operate their vessels individually. In particular, in order to offer a liner shipping service with a regular schedule, firms must meet a minimum demand that justifies incurring the costs of operating the service. Further, ships need to be filled to high levels of capacity in order to be truly cost efficient. Accordingly, in a consortium, the frequency of services can be increased because, by carriers jointly operating a service and pooling their cargoes, vessels can be more easily and quickly filled to full/high capacity.¹³

To illustrate this point, consider a consortium with two carriers A and B, where A provides 40% of the consortium capacity, and B provides 60% of the capacity. Suppose this consortium offers a weekly service on a given trade route. If A were to individually offer the consortium's services provided today at the highest possible capacity it can achieve on its own, vessels would need to call at ports roughly every two and half weeks instead of on a weekly basis in

¹² Psaraftis, Harilaos N. and Kontovas, Christos A; CO₂ Emission Statistics for the World Commercial Fleet, WMU Journal of Maritime Affairs, 2009: "CO₂ emissions in our study were calculated as follows. Fuel consumption was used as the main input, as opposed to horsepower, since fuel consumption data was the main input data that was solicited and received. Then, independent of type of fuel, one multiplies total bunker consumption (in tonnes per day) by a factor of 3.17 to compute CO₂ emissions (in tonnes per day)."

¹³ COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.29: "Cargo consolidation is also an important efficiency gain. For a vessel to be operated profitably it has to reach a certain level of space utilisation; a higher utilisation also means lower cost per container. A vessel may wait in a port or call at several ports until the required level of utilisation is reached. A consortium serves the customer base of all its members allowing higher utilisation of the vessels which increases profitability and reduces cost per container. Transit times are shortened because the vessels wait less time or call at fewer ports before they reach the required level of utilisation. This means that less vessels are required to provide the same frequency of service and they can be deployed on other routes or used to increase the frequency. Cargo consolidation also facilitates investment in more modern (normally larger) cost-efficient vessels because it is easier to fill and operate them profitably".

order to be filled up. This follows from the fact that A provides roughly 40% of the TEU capacity and vessel fleet. Holding constant demand faced by carriers and capacity levels at which sailings are made, it would take two and a half times longer for A ships to be filled up to the same extent as in the consortium, which would lead to a significant reduction in the frequency of services offered to customers.

Third, consortia enable their members to serve more ports and offer more diversified routes, while maintaining frequency and offering shorter sailing times. These effects can be illustrated by a simple example: suppose two carriers are active on the same route from port A to point B. There are two ports, C and D, between A and B, that could be included in the service. On its own, neither carrier would have an incentive to start serving port C or port D, to the extent that it expects the demand it faces would not be sufficient to cover the cost of adding a port call. However, if they enter into a consortium, the two carriers together generate enough volume to justify calling at port C and/or port D. This is all the more likely if, through their consortium, the two carriers decrease their costs by using a larger vessel, which makes adding calls at additional ports even more worthwhile.

Being in a consortium therefore enables its members to be able to better respond to customers preferences and offer them more port call alternatives and at lower cost than they could individually. These benefits are enhanced by the establishment of alliances, which unlike consortia covering services in one trade lane, cover multiple trades.¹⁴

In summary, by pooling capacity, consortia agreements enable carriers to operate larger, more cost and environmentally efficient vessels, thereby achieving cost efficiencies and entering markets they would not have otherwise been able to operate in individually. Consortia also allow carriers to offer service frequencies that they would be unable to provide independently, and therefore serve more demand.

Indeed, as noted by the EC:

“[Liner shipping services] require significant levels of investment and therefore are regularly provided by several shipping companies cooperating in "consortia" agreements. “Consortia can lead to economies of scale and better utilisation of the space of the vessels. In principle, a fair share of the benefits resulting from these efficiencies can be passed on to users of the shipping services in terms of better coverage of ports [i.e., improvement in the frequency of sailings and port calls] and better services [i.e., improvement in scheduling, better or personalised

¹⁴ Decision M. 7908 - CMA CGM / NOL, Recital 25: “Expanding cooperation across multiple trades increases the ability of the container liner shipping companies to deploy assets in the most appropriate and cost-efficient way. If new larger ships are introduced in one trade, existing tonnage can be more easily and efficiently redeployed or cascaded into other trades. At the same time, the port coverage that each container liner shipping company can offer to its clients may be expanded, leading to enhanced customer choice and more price competition at each port location. Moreover, by forming alliances, carriers may be better placed to secure sufficient numbers of vessels to offer a fixed or weekly schedule on a more reliable basis for the benefit of their customers who seek not only lower costs, but also require certain frequency of services”.

services through the use of more modern vessels, equipment and port facilities].”^{15, 16, 17}

3 The liner shipping industry in the UK

3.1 Overview

In this sub-section we now present relevant data concerning the UK liner shipping industry, specifically relating to:

- connectivity;
- services offered; and
- capacity.

3.2 Connectivity

The UK is very well-connected to the rest of the world through liner shipping services. This is illustrated by the United Nations Conference on Trade and Development (“UNCTAD”) Liner Shipping Connectivity Index (“LSCI”), which measures the integration level of countries to global liner shipping networks. We understand that it is the industry standard for assessing and comparing the degree of integration of different countries in the liner shipping trading routes.

The LSCI is computed based on of six components, relating to (i) the number of ship calls; (ii) the capacity deployed; (iii) the number of regular services; (iv) the number of carriers offering services; (v) the highest average size of the ships deployed on a service calling at a port of the country; and (vi) the number of different countries directly connected to the relevant country. This index is set to 100 for the maximum score obtained in quarter 1 of 2006 (i.e., 2006Q1), namely that of China.¹⁸

In this regard, Figure 1 below sets out the evolution of the LSCI for the seven best-connected European countries, i.e., Belgium, France, Germany, Italy, Spain, the Netherlands and the UK, between 2012Q1 and 2022Q3.

¹⁵ https://ec.europa.eu/commission/presscorner/detail/es/ip_20_518

¹⁶ See also COMMISSION STAFF WORKING DOCUMENT EVALUATION of the Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), p.7.

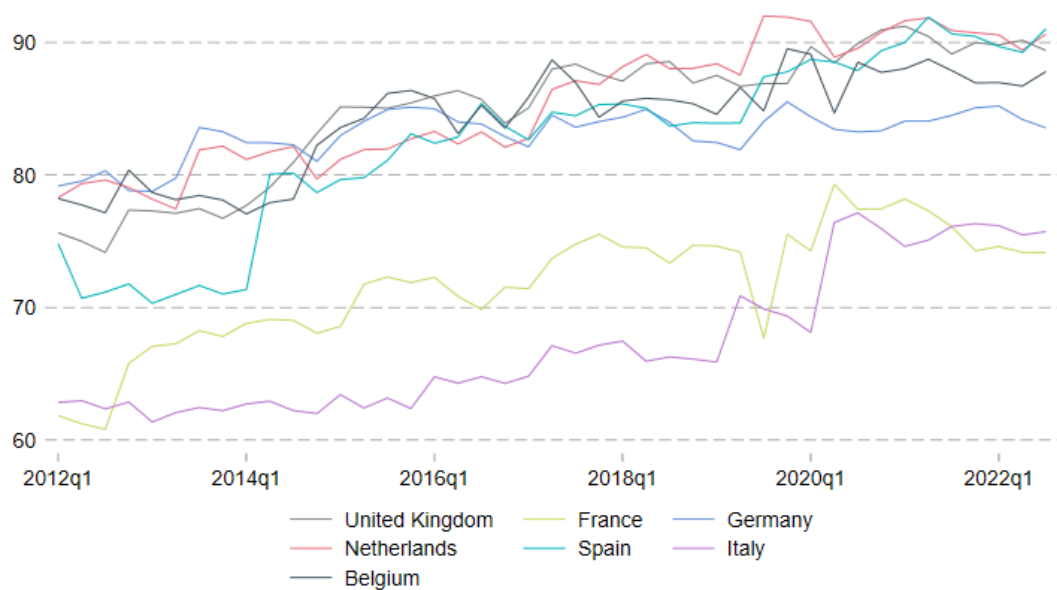
¹⁷ See also EC Decision Case M.8330 - MAERSK LINE / HSDG, Recital 55 : “Although **the cooperation of consortium members in jointly operating container liner shipping services is likely to restrict competition, it also enables achieving certain efficiencies**, notably by improving the productivity and quality of the available liner shipping services, by enabling the rationalisation of services and economies of scale, **by offering greater frequencies**, port calls, and, more generally, by promoting technical and economic progress. For customers to benefit from those efficiencies, however, sufficient competition should be maintained in the market. This condition is met, according to the Commission’s Block Exemption Regulation (“BER”), where the market share of a consortium does not exceed 30% on a given trade and the consortium agreement does not include features likely to significantly restrict competition, such as the fixing of prices, the limitation of capacity, and the allocation of customers or markets.”, emphasis added.

¹⁸ For each component, the country’s value is divided by the maximum value for the component in Q1 2006 and then calculate the average of the six components for the country. The country average is then again divided by the maximum value for the average in Q1 2006 and multiplied with 100. The result is a maximum LSCI of 100 in Q1 2006. This means that the index for China in Q1 2006 is 100 and all other indices are in relation to this value.

The figure indicates that, for the UK, the LSCI index has grown steadily from a little over 75 in 2012-2013 to around 90 as of 2020-2022. This represents an increase of 20% in less than ten years.

The figure also shows that the UK is amongst the most-connected European countries. In particular, it has a comparable LSCI to the Netherlands and Spain, and is materially more connected than France, Germany and Italy.

Figure 1: Evolution of LSCI from Q1 2012 to Q2 2022 – Top 7 of best-connected European countries



Source: UNCTAD

It is also notable that consortia are likely to contribute directly to a high LSCI score. In particular, as described above, the LSCI is composed of six components, at least four of which are improved as a consequence of consortia arrangements. In this regard:

1. The number of scheduled ship calls per week: as discussed above in sub-section 2.3, consortia arrangements enable carriers to increase the frequency of their services above what they could sustain if they operate individually. It therefore follows that consortia can be expected to lead to an increase of the number of ship calls.
2. The number of carriers that provide services from and to the country: as explained above, through consortia smaller carriers can afford to offer services on routes where they would otherwise be unable to reach the minimum required volumes to operate in individually. This means that more carriers can offer capacity and services from and to a country when consortia are present. This can be expected, all else equal, to result in a greater number of carriers calling at ports in the UK.
3. The average size in TEU of the vessels that are deployed on the scheduled service that has the largest average vessel size: as explained above in sub-section 2.3, one of the

well-recognised benefits of consortia arrangements is that they enable the utilisation of larger vessels.

4. The number of other countries that are directly connected to the country in question: as set out in sub-section 2.3 above, one of the benefits of consortia arrangements is that they create an increased incentive to call at more and different ports relative to a situation where carriers operate individually.

3.3 Services with port calls in the UK

Table 3 below provides an overview of services with port calls in the UK as of September 2022 (as per information obtained from Alphaliner).

Table 3: Overview of services with port calls in UK

Metric	Consolidation	2022 figures
Number of carriers	Total	33
Number of services	Total	91
	Consortia	32
	Single carrier	59
Total capacity (TEU)	Total	412,830
	Consortia	286,877
	Single carrier	125,953
Number of vessels deployed	Total	464
	Consortia	280
	Single carrier	184
Range of average capacity of vessels (TEU)	Total	7,312 – 9,443
	Consortia	10,154 – 12,682
	Single carrier	3,138 – 4,513
Average weekly capacity (TEU)	Total	7,432
	Consortia	9,929
	Single carrier	3,631

Source: *Alphaliner services database, 27 Sep 2022.*

The table shows that 33 different carriers operated 91 unique services calling at UK ports.¹⁹ The table also illustrates that consortia operate more vessels than single carriers (with the average single carrier service comprising 3 vessels, while the average consortia service

¹⁹ Here, Sealand, Hamburg Sud and Maersk are considered as a single carrier, and COSCO and OOCL are considered as a single carrier although they operate under different brands.

comprises more than 8 vessels). That is, consortia appear to operate larger fleets, with more vessels allocated to each service on average. This implies that consortia can be expected to be in a position to offer services covering longer distances at a given frequency, and/or provide a more frequent service on the same routes, relative to individual carriers.

In addition, the table indicates that the capacity of consortia vessels is significantly larger than that of individual carriers (two to four times larger). As a result, the average weekly capacity consortia bring to market is almost three times that of individual carriers.

The above statistics come against a backdrop of ongoing entry and expansion in the broader industry. For instance, as set out in Table 4 below, a number of new carriers, including intra-Asian carriers, have entered the transpacific and Asia-Europe trades in recent years.²⁰ For example, Allseas Shipping Company, the first British shipping company launched in 40 years, is one of the six recent entrants in European routes in 2021-2022, and offers services connecting China and Bangladesh to the UK and the Netherlands.²¹

Table 4: New entry in 2021 and 2022

Entrant	Entry date	Trade route
RifLine	2021	Asia - Europe
EShipping Gateway	2021	Asia - Europe
Fields	2021	Intra Europe
Tailwind Shipping Lines	2022	China - Europe
Allseas Shipping Company	2022	China - North Europe
Ellerman City Liners	2022	China - UK
Carrier 53'	2022	China - US

Source: *Alphaliner news*, 10 Aug 2022, *Alphaliner news*, 22 Jun 2022, *Alphaliner news*, 8 Apr 2022, *Alphaliner news*, 2 Feb 2022, *Alphaliner news*, 8 Sep 2021, *Alphaliner news*, 16 Aug 2021

Further evidence of the dynamism of the liner shipping industry is provided in Table 5 below, which lists a number of trade routes in which services were improved in 2021 and 2022, either in terms of extra vessels or additional port calls being added, from both consortia vessels (e.g., a consortium between ONE and CMA CGM and the 2M alliance between Maersk and MSC) and individual operators (e.g., OOCL and MSC). Maersk and MSC have for instance improved their joint 2M Northern Europe – US East Coast service “TA2 / NEU-ALT2” by adding an additional 7,154 TEU vessel to the service rotation, which we understand will allow the service to run at an increased frequency and incorporate a new port call in Charleston, US. This improved service also re-instated their UK call at the port of Felixstowe (which had been replaced by the port of Liverpool in December 2020).

²⁰ <https://loydslist.maritimeintelligence.informa.com/LL1141962/Transpacific-bet-pays-off-for-smaller-container-lines;>
<https://loydslist.maritimeintelligence.informa.com/LL1141272/Fast-growing-upstart-carriers-exposed-to-spot-rate-volatility>

²¹ [https://maritime-executive.com/article/logistics-company-launches-first-british-shipping-line-in-40-years,](https://maritime-executive.com/article/logistics-company-launches-first-british-shipping-line-in-40-years)
<https://allseasshippingco.com/services/>

Table 5: New and improved trade routes opened in 2021 and 2022

Carrier	Service	Ships deployed
OOCL, COSCO	Mediterranean – West Africa	7 x 4,050 – 5,900
Ocean Network Express (ONE), CMA CGM	North Europe – East Mediterranean*	1 x 4,253
Evergreen / Italia Marittima	Intra Mediterranean and Black Sea*	1 x 1,145 – 1,164
MSC	Baltic – North Europe – USEC	6 x 4,250 – 6,700
2M	North Europe – USEC*	6 x 7,150 – 8,800
CMA CGM, Hapag-Lloyd	India / Pakistan / USEC*	8 x 3,000 – 6,000
IAL, RCL, PIL and CULines	China - India - Straits - Vietnam service	6 x 7,150 – 8,800
Wan Hai Lines	South China – Vietnam – Eastern India	4 x 1,400 – 1,700
Wan Hai Lines	China – Middle East	6 x 2,800 – 4,300

Source: *Alphaliner newsletter, 2022 Issue 12, pages 11, 13, 15, Alphaliner newsletter, 2021, Issue 38, page 1, Alphaliner news, 4 Oct 2021, Alphaliner news, 12 Jan 2021, Alphaliner news, 8 Jul 2020*
 * Improved routes

For completeness, a summary of consortia and individual carriers active on routes calling at UK ports, along with their respective capacity shares are provided in Annex D, a summary of the services offered on these trade routes is provided in Annex E and more detailed list of services with port calls in the UK is provided in Annex F. Annex B provides a description of the underlying data and methodology applied to produce these Annexes D, E and F.

3.4 Capacity

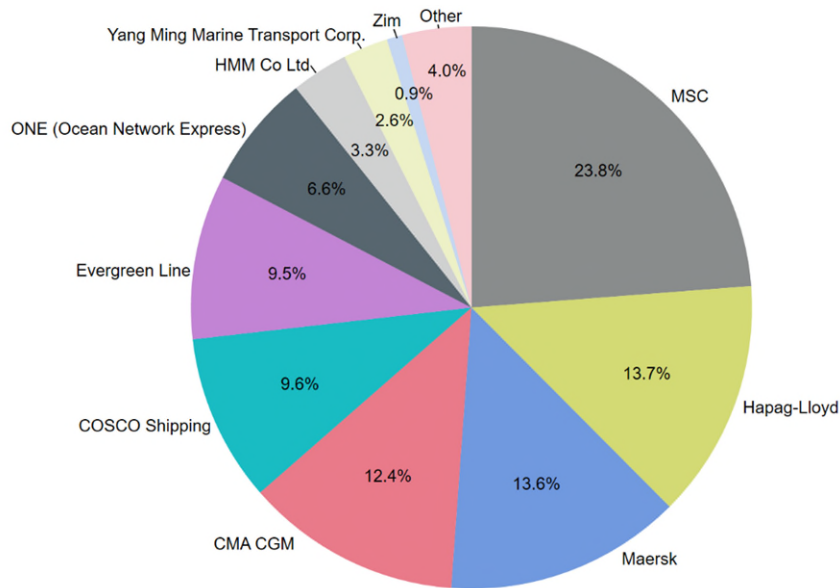
Alphaliner reports the operator of the vessels deployed on each service (i.e., the carrier), globally and for a given country. This allows for the calculation of capacity shares amongst carriers. Using this information, we have sought to compute capacity shares for the UK. The results of this analysis are presented in Figure 2, which shows capacity shares for each of the 10 largest active carriers, plus an “Other” category including all other carriers with shares of less than 1% (of which there are 25) as of 2022.

The figure indicates that the UK exhibits relatively low levels of concentration. In particular, there are 9 carriers with capacity shares higher than 1%, while there is only one carrier with a capacity share above 20%. There are five carriers with shares that are either just below or a little above 10%.

The relatively low level of concentration is confirmed by a Herfindahl-Hirschman Index (HHI) of around 1,300.²²

²² <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c>: “Based on their experience, the Agencies generally classify markets into three types:
 - Unconcentrated Markets: HHI below 1500
 - Moderately Concentrated Markets: HHI between 1500 and 2500
 - Highly Concentrated Markets: HHI above 2500”

Figure 2: Capacity shares of the top 10 carriers with port calls in UK - 2022



Source: Alphaliner services database, 28 Sep 2022.

Note: Sealand is a part of Maersk although it operates under its own brands, and its shares were aggregated with those of Maersk.

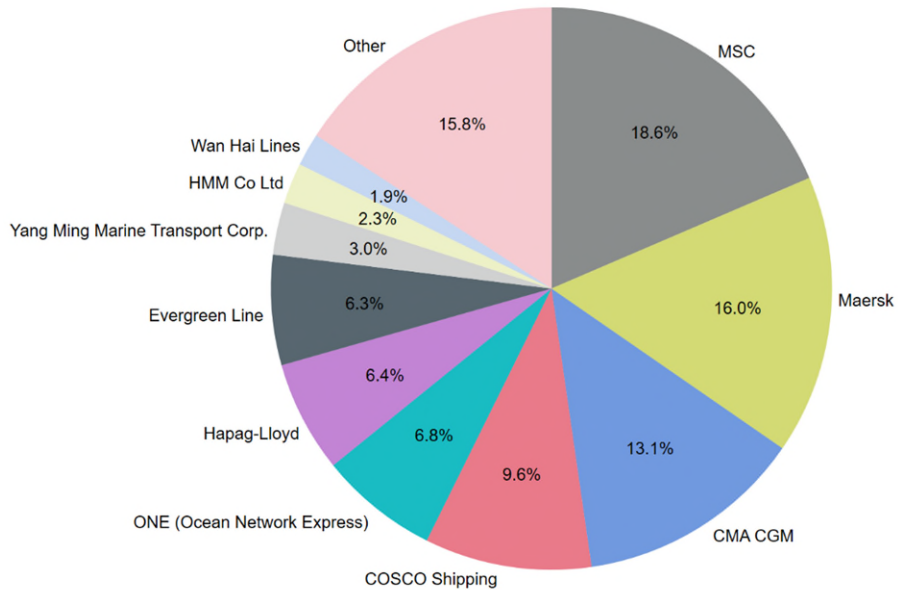
COSCO Shipping and OOCL have merged on 24 July 2018 although they operate as a different brand, we have considered OOCL as a part of COSCO Shipping.

Maersk and Hamburg Süd have merged on 28 April 2017 although they operate as a different brand, we have considered Hamburg Süd as a part of Maersk.

Notably, concentration is even more limited at a global level. This is illustrated in Figure 3 below, which indicates that there are no carriers with a capacity share above 20%, only three carriers with capacity shares higher than 10%, and only seven with capacity shares above 5% globally. The top 5 carriers account for less than 65% of the world fleet capacity, with the top 10 only holding 84% of the global capacity. The remaining 16% of worldwide capacity is distributed amongst over 300 different carriers. These shares give rise to a global HHI of around 1,000 (notably even after what has been described as a wave of consolidation in the sector in around 2016-2017).²³

²³ The acquisition of CSCL by COSCO (2016); the acquisition of APL-NOL by CMA CGM (2016); the acquisition of the United Arab Shipping Company (UASC) by Hapag Lloyd (2016); the market exit of Hanjin Shipping as a result of its bankruptcy (2016); the acquisition of Hamburg Süd by Maersk (2017); the formation of the ONE joint venture combining the containerised services of NYK, MOL and K Line (2017); and the acquisition of OOCL by COSCO (2017).

Figure 3: Global capacity shares of the top 10 carriers - 2022



Source: *Alphaliner, Services database 5 Sep 2022.*

Note: *Sealand is a part of Maersk although it operates under its own brands, and its shares were aggregated with those of Maersk*

COSCO Shipping and OOCL have merged on 24 July 2018 although they operate as a different brand, we have considered OOCL as a part of COSCO Shipping.

Maersk and Hamburg Süd have merged on 28 April 2017 although they operate as a different brand, we have considered Hamburg Süd as a part of Maersk.

Annexes

A Comparison of vessel sizes

Table 6: Comparison of vessel size for single carriers and consortia on trade routes calling at UK ports

Route	Size range of single carrier vessels (TEU)	Size range of consortia vessels (TEU)	Ratio of consortia to single carrier vessels
Europe / Caribbeans & North Coast of South America (incl. Guyanas)	2,229 – 2,946	6,295 – 7,830	2.1 - 3.5
Europe / East Coast of South America	10,589*	3,778 – 6,565	0.4 - 0.6
Europe / Middle East or South Asia - dedicated services	4,424 – 8,484	7,515 – 10,289	0.9 - 2.3
Med / Far East services - as part of a wider port rotation	1,400 – 1,878	15,757 – 22,991	8.4 - 16.4
North Europe / Far East	1,826 – 3,151	15,490 – 18,957	4.9 - 10.4
North Europe / Mediterranean	4,279 – 5,663	3,219 – 4,779	0.6 - 1.1
North Europe to US East Coast / US Gulf / US West Coast	3,091 – 3,108	4,713 – 5,951	1.5 - 1.9
Services Europe / South & East Africa	6,336 – 12,108	7,548 – 9,512	0.6 - 1.5

Source: *Alphaliner services database, 27 Sep 2022.*

* There is only one single carrier service on this route, and it is operated with 8 ships of the exact same size.

B Fuel consumption by vessel size and speed of sailing

Table 7: Fuel costs at sea for three types of container vessels and different service speeds (USD per day) at end-July 2006 bunker prices

Speed (kn) / Vessel size (TEU)	USD per day			USD per day per TEU			Economy per TEU vs. 5,000 TEU vessel	
	5,000	8,000	12,000	5,000	8,000	12,000	8,000	12,000
14	12,200	16,000	20,700	2.4	2.0	1.7	-18%	-29%
16	16,800	21,600	27,500	3.4	2.7	2.3	-20%	-32%
18	23,100	29,000	36,500	4.6	3.6	3.0	-22%	-34%
20	31,800	39,400	48,700	6.4	4.9	4.1	-23%	-36%
22	43,700	52,200	64,400	8.7	6.5	5.4	-25%	-39%
24	59,300	69,400	83,600	11.9	8.7	7.0	-27%	-41%
26	82,800	96,100	114,700	16.6	12.0	9.6	-27%	-42%

Source: *Notteboom, T.E., Vernimmen, B., The effect of high fuel costs on liner service configuration in container shipping, Journal of Transportation Geography (2008), Table 3. Computations: RBB.*

C Data summary and methodology

The tables below provide an overview of the cooperation agreements in place on the major trade lanes as of 5 September 2022, based on the information available from Alphaliner.

The Alphaliner database provides detailed information at the level of individual services provided by carriers. The database indicates which services are operated jointly, i.e., through vessel sharing agreements (VSAs) and in which services slot agreements are in place. However, these tables should be interpreted with some caution for the following reasons:

- Alphaliner updates the service offering of carriers on a continuous basis to account *inter alia* for seasonality in demand and the resulting adjustments in the service offering of the carriers. In addition, lighter less-structural, forms of cooperation, such as slot charter agreements, can be introduced or terminated at short term. The overview presented is hence a snap-shot picture that evolves over time.
- On Alphaliner's services database, some services appear under multiple trade routes. For example, services operating on *Europe / Far East services calling en route in Middle East and South Asia* are included in the Middle East and South Asia trade although the service can also cover Far East. Such a service would therefore be included in both the Europe – Middle East and South Asia and the Europe – Far East table in the below. The geographic scope of the table is hence relatively broad and may include services that may not compete with each other directly. The tables do not therefore represent relevant markets for the purposes of a competition law assessment.
- Likewise, the shares presented in the tables should not be considered shares on relevant markets; these are simply the capacity shares at service level calculated with reference to the total capacity represented in the table.
- Weekly capacity data is not available for all services and hence not for all cooperation agreements.
- For completeness, the tables include a row indicating "single carrier services", this combines the services and associated weekly capacity for those services offered by a single carrier.
- Finally, some firms which have merged are still operating under their own brand and not all changes resulting from mergers and acquisitions are (yet) reflected in Alphaliner. For example, whilst OOCL has merged with COSCO, OOCL still operates as a separate brand in the market. The same goes for Sealand, which operates different brands (Sealand Europe & Mediterranean, Sealand Asia and Sealand Americas), although it is a part of Maersk. Similarly, Alphaliner records Hamburg Süd as an independent carrier whilst it has been acquired by Maersk. When these different brands owned by the same carrier operate a service jointly, we have manually adjusted so that these instances are recorded as a single carrier service and not an arrangement between carriers. No further

adjustments have been made to the data, consequently other carriers operating a same service under different brands may fail to be included in the single carrier service category.

Notwithstanding these caveats, the summary overview below presents a good picture of cooperation within the industry that the Consortia BER seeks to cover and facilitate.

D Capacity

Table 8: Capacity supplied on services with port calls in the UK

Carriers	Average weekly TEU	Share of weekly TEU
Single carrier services	74,707	18.1%
OCEAN Alliance	68,642	16.6%
THE Alliance	51,403	12.5%
2M agreement	49,060	11.9%
CMA CGM / Hapag-Lloyd / COSCO; Slotlers: OOCL / Maersk / Hamburg Süd	10,853	2.6%
Maersk / Hamburg Süd; Slotlers: Hamburg Süd / CMA CGM / COSCO Shipping	10,589	2.6%
MSC; Slotlers: Stinnes Linien	9,533	2.3%
MSC / CMA CGM	9,272	2.2%
Hapag-Lloyd / ONE; Slotlers: Arkas Line / EMES / CMA CGM / COSCO Shipping / OOCL	8,786	2.1%
MSC / Shg Corp. of India	8,550	2.1%
CMA CGM / COSCO; Slotlers: Hapag-Lloyd / ONE (Ocean Network Express)	8,517	2.1%
Hapag-Lloyd / MSC	8,314	2.0%
THE Alliance; Slotlers: ACL	8,003	1.9%
Sealand E&M (Maersk) / Diamond Line (COSCO) / Hapag-Lloyd; Slotlers: OOCL / Turkon Line / Borchard Lines / Maersk	7,792	1.9%
THE Alliance; Slotlers: APL	7,323	1.8%
Maersk / ONE / Hapag-Lloyd; Slotlers: Deutsche-Afrika Linien (DAL)	6,912	1.7%
MSC; Slotlers: Shipping Corp. of India (SCI)	6,776	1.6%
Hapag-Lloyd / COSCO / OOCL / ONE / Yang Ming	5,554	1.3%
Hapag-Lloyd / OOCL; Slotlers: COSCO Shipping	4,312	1.0%
MSC / Hapag-Lloyd / OOCL; Slotlers: COSCO Shipping	4,224	1.0%
COSCO / OOCL / Yang Ming; Slotlers: Borchard Lines / Diamond Line	4,096	1.0%

Carriers	Average weekly TEU	Share of weekly TEU
THE Alliance; Slotter: CMA CGM	4,027	1.0%
CMA CGM; Slotter: Marfret / Maersk	3,683	0.9%
CMA CGM / ONE	3,645	0.9%
CMA CGM; Slotter: ONE (Ocean Network Express) / Unimed Feeder Services (UFS) / Metz Container Line	3,104	0.8%
WEC Lines; Slotter: MSC	2,629	0.6%
Maersk / Hamburg Süd; Slotter: MSC / Hamburg Süd / Sealand Americas	2,478	0.6%
CMA CGM / Marfret; Slotter: ANL	2,361	0.6%
CMA CGM / Marfret	2,198	0.5%
China United Lines / TS Lines	2,165	0.5%
Unifeeder; Slotter: COSCO Shipping / OOCL	1,718	0.4%
Containerships; Slotter: CMA CGM	1,705	0.4%
Great White Fleet; Slotter: Chiquita	1,361	0.3%
BG Freight; Slotter: Eucon / Maersk / Sealand Europe & Med	1,036	0.3%
Unifeeder; Slotter: ONE (Ocean Network Express) / COSCO Shipping / OOCL / CMA CGM	1,030	0.2%
MSC; Slotter: WEC Lines	1,008	0.2%
Borchard / Gracechurch	868	0.2%
BG Freight French Service; Slotter: Maersk / Sealand Europe & Med / CMA CGM	868	0.2%
Containerships; Slotter: Samskip / CMA CGM	862	0.2%
Samskip; Slotter: SCS Multiport	835	0.2%
BG Freight; Slotter: UniFeeder / Sealand Europe & Med / Maersk / CMA CGM	822	0.2%
X-Press Feeders; Slotter: OOCL / COSCO Shipping	607	0.1%
BG Freight; Slotter: CMA CGM / Sealand Europe & Med / Eucon	602	0.1%
Total	412,830	100%

Source: *Alphaliner services database, 27 Sep 2022*

E Summary of services

Table 9: Summary of services with calls at UK ports

Trade route	Number of services offered by consortia carriers	Number of services offered by individual carriers
Europe / ANZ + Oceania	2	-
Europe / Caribbeans & North Coast of South America (incl. Guyanas)	2	5
Europe / East Coast of South America	2	1
Europe / Far East services calling en route in Middle East and South Asia	6	-
Europe / Middle East or South Asia - dedicated services	4	3
Med / Far East services - as part of a wider port rotation	4	1
North Europe / Far East	11	2
North Europe / Mediterranean	4	8
Intra North Europe only	-	38
North Europe to US East Coast / US Gulf / US West Coast	6	1
North Europe to USNH / Canada (St Lawrence)	2	-
Services Europe / South & East Africa	2	1

Source: *Alphaliner services database, 27 Sep 2022*

F Detailed list of services

Table 10: List of services with port calls in the UK

Service	Partner	Ships deployed
Europe - ANZ and Oceania		
Europe-Mascareignes-Australia-Singapore-Colombo service (Australia Express / NEMO)	Vessel providers: MSC / CMA CGM	15 ships (from 8,266 - 10,926 TEU)
Europe-US-ANZ Pendulum via Panama (PAD / NASP)	Vessel providers: Marfret / CMA CGM / Sloters: ANL	13 ships (from 2,259 - 2,506 TEU)
Europe - Caribbeans & North Coast of South America (incl. Guyanas)		
North Europe-Mexico-Centram 'Columbia Express' (COEX)	Vessel providers: Maersk / Sloters: Hamburg Süd	7 ships (from 2,532 - 2,592 TEU)

Service	Partner	Ships deployed
North Europe-Centram container reefer service	Vessel providers: Great White Fleet / Slotlers: Chiquita	5 ships (from 607 - 2,492 TEU)
Europe-NCSA-WCSA service (Eurosal XL / SWX / EWX)	Vessel providers: COSCO Shipping / CMA CGM / Hapag-Lloyd / Slotlers: OOCL / Maersk / Hamburg Süd	9 ships (from 9,092 - 11,519 TEU)
Europe-NCSA-Centram service (CES)	Vessel providers: Hapag-Lloyd	6 ships (from 2,554 - 2,756 TEU)
Europe-USEC-Centram service (CRX / EMCS)	Vessel providers: Maersk / Slotlers: MSC / Hamburg Süd / Sealand Americas	7 ships (from 1,713 - 2,846 TEU)
NW Europe-French West Indies-Centram-NCSA service (PCRF = NEFWI + ECS)	Vessel providers: CMA CGM / Slotlers: Marfret / Maersk	6 ships (from 3,504 - 4,043 TEU)
Europe-Guyana-North Brazil service (via St Martin) (NEFGUI)	Vessel providers: CMA CGM / Marfret	6 ships (from 2,100 - 2,296 TEU)
Europe - East Coast of South America		
Europe-ECSA service (Samba / SAEC)	Vessel providers: Maersk / Slotlers: Hamburg Süd / CMA CGM / COSCO Shipping	8 ships (from 10,589 - 10,589 TEU)
Europe-Guyana-North Brazil service (via St Martin) (NEFGUI)	Vessel providers: CMA CGM / Marfret	6 ships (from 2,100 - 2,296 TEU)
Europe-ECSA service (ECX / NWC/SAEC)	Vessel providers: Hapag-Lloyd / MSC	9 ships (from 4,896 - 9,411 TEU)
Europe - Far East services calling en route in Middle East and South Asia		
South-East Asia-North Europe service – FE5	Vessel providers: ONE (Ocean Network Express) / Yang Ming Marine Transport Corp. / Alliance partners: Hapag-Lloyd / HMM Co Ltd	10 ships (from 13,870 - 14,220 TEU)
Asia-North Europe service - NEU6	Vessel providers: Evergreen Line / Alliance partners: CMA CGM / COSCO Shipping / OOCL	11 ships (from 20,124 - 24,004 TEU)
Asia-North Europe service - FE3	Vessel providers: HMM Co Ltd / ONE (Ocean Network Express) / Hapag-Lloyd / Alliance partners: Yang Ming Marine Transport Corp.	11 ships (from 14,600 - 16,010 TEU)
Asia-North Europe service - NEU5	Vessel providers: CMA CGM / Alliance partners: COSCO Shipping / Evergreen Line / OOCL	12 ships (from 17,292 - 17,859 TEU)
Europe-Mascareignes-Australia-Singapore-Colombo service (Australia Express / NEMO)	Vessel providers: MSC / CMA CGM	15 ships (from 8,266 - 10,926 TEU)
Asia-Europe (AE-7 / Condor) (HS: NERA 4)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	12 ships (from 16,652 - 20,568 TEU)
Europe - Middle East or South Asia - dedicated services		

Service	Partner	Ships deployed
North Europe-Middle East-ISC service (ME7)	Vessel providers: Maersk	9 ships (from 4,132 - 9,034 TEU)
Indian Subcontinent Europe Service (Himalaya Express / ISE)	Vessel providers: Shipping Corp. of India (SCI) / MSC	9 ships (from 11,037 - 13,798 TEU)
North Europe-Middle East-ISC 'IOS' service	Vessel providers: Hapag-Lloyd / ONE (Ocean Network Express) / Sloters: Arkas Line / EMES / CMA CGM / COSCO Shipping / OOCL	8 ships (from 8,750 - 9,040 TEU)
Europe-East India-South India service	Vessel providers: Hapag-Lloyd / COSCO Shipping / OOCL / ONE (Ocean Network Express) / Yang Ming Marine Transport Corp.	9 ships (from 4,520 - 7,323 TEU)
Europe-Red Sea-ISC service (IPAK)	Vessel providers: MSC / Sloters: Shipping Corp. of India (SCI)	9 ships (from 5,605 - 12,108 TEU)
Indian Subcontinent-East Mediterranean Service (ZMI)	Vessel providers: Zim	9 ships (from 3,534 - 4,311 TEU)
North Europe-Middle East-ISC 'EPIC' service	Vessel providers: CMA CGM / COSCO Shipping / OOCL / Sloters: Hapag-Lloyd / ONE (Ocean Network Express)	8 ships (from 5,688 - 10,926 TEU)
Med - Far East services - as part of a wider port rotation		
Europe-FE service (AE-6 / Lion)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	11 ships (from 13,050 - 23,782 TEU)
Asia-North Europe service - FE2	Vessel providers: Hapag-Lloyd / ONE (Ocean Network Express) / HMM Co Ltd / Alliance partners: Yang Ming Marine Transport Corp.	12 ships (from 19,870 - 23,964 TEU)
China-Bangladesh-North Europe 'China Xpress' (CEL)	Vessel providers: DKT Allseas	6 ships (from 1,400 - 1,878 TEU)
Asia-Europe (AE-7 / Condor) (HS: NERA 4)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	12 ships (from 16,652 - 20,568 TEU)
Asia-Med-N. Europe (AE-55 / Griffin)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	11 ships (from 13,000 - 23,782 TEU)
North Europe - Far East		
North Europe-Asia-USWC pendulum - FP2 = FE5 + PS7	Vessel providers: Yang Ming Marine Transport Corp. / ONE (Ocean Network Express) / Alliance partners: Hapag-Lloyd / HMM Co Ltd	18 ships (from 13,870 - 14,080 TEU)
Asia-Europe-Express service (AEX)	Vessel providers: TS Lines / China United Lines	6 ships (from 4,132 - 4,395 TEU)
Europe-FE service (AE-6 / Lion)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	11 ships (from 13,050 - 23,782 TEU)
Asia-North Europe (GB Express)	Vessel providers: Ellerman	4 ships (from 2,464 - 5,060 TEU)

Service	Partner	Ships deployed
Asia-North Europe service - FE2	Vessel providers: Hapag-Lloyd / ONE (Ocean Network Express) / HMM Co Ltd / Alliance partners: Yang Ming Marine Transport Corp.	12 ships (from 19,870 - 23,964 TEU)
China-Bangladesh-North Europe 'China Xpress' (CEL)	Vessel providers: DKT Allseas	6 ships (from 1,400 - 1,878 TEU)
Asia-North Europe service - NEU6	Vessel providers: Evergreen Line / Alliance partners: CMA CGM / COSCO Shipping / OOCL	11 ships (from 20,124 - 24,004 TEU)
Asia-North Europe service - NEU1	Vessel providers: OOCL / COSCO Shipping / Alliance partners: CMA CGM / Evergreen Line	11 ships (from 18,980 - 21,413 TEU)
South-East Asia-North Europe service – FE5	Vessel providers: ONE (Ocean Network Express) / Yang Ming Marine Transport Corp. / Alliance partners: Hapag-Lloyd / HMM Co Ltd	10 ships (from 13,870 - 14,220 TEU)
Asia-Med-N. Europe (AE-55 / Griffin)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	11 ships (from 13,000 - 23,782 TEU)
Asia-North Europe service - FE3	Vessel providers: HMM Co Ltd / ONE (Ocean Network Express) / Hapag-Lloyd / Alliance partners: Yang Ming Marine Transport Corp.	11 ships (from 14,600 - 16,010 TEU)
Asia-North Europe service - NEU5	Vessel providers: CMA CGM / Alliance partners: COSCO Shipping / Evergreen Line / OOCL	12 ships (from 17,292 - 17,859 TEU)
Asia-Europe (AE-7 / Condor) (HS: NERA 4)	Vessel providers: Maersk / MSC / Alliance partners: Hamburg Süd	12 ships (from 16,652 - 20,568 TEU)
North Europe - Mediterranean		
North Europe-Marmara Sea service (FEMEX)	Vessel providers: CMA CGM / Slotter: ONE (Ocean Network Express) / Unimed Feeder Services (UFS) / Metz Container Line	5 ships (from 3,421 - 5,090 TEU)
NW Europe-Eastern Med (Turkey - main loop)	Vessel providers: MSC	4 ships (from 5,700 - 6,724 TEU)
North Sea-Eastern Med service (North Sea)	Vessel providers: Sealand Europe & Med / Slotter: Hamburg Süd / Maersk	4 ships (from 2,274 - 3,674 TEU)
Turkey to/from Liverpool service	Vessel providers: MSC	5 ships (from 2,506 - 4,814 TEU)
NW Europe-Eastern Med (loop 3 - Greece & Turkey - Aegean loop)	Vessel providers: MSC	4 ships (from 4,254 - 5,089 TEU)
NW Europe-Eastern Med (loop 4 - Turkey - Marmara loop)	Vessel providers: MSC	3 ships (from 4,396 - 4,872 TEU)
North Europe-Turkey Express (SLC Aegean / NET / EMX)	Vessel providers: Sealand Europe & Med / Diamond Line / Hapag-Lloyd / COSCO Shipping / Slotter: OOCL / Turkon Line / Borchard Lines / Maersk	5 ships (from 6,788 - 8,501 TEU)

Service	Partner	Ships deployed
Irish Sea - NWC - Med service	Vessel providers: Borchard Lines	5 ships (from 868 - 868 TEU)
NW Europe-Eastern Med service (Israel Express)	Vessel providers: MSC	5 ships (from 4,872 - 6,336 TEU)
North Europe-East Med service (NET 2 / NEX)	Vessel providers: OOCL / COSCO Shipping / Yang Ming Marine Transport Corp. / Slotlers: Borchard Lines / Diamond Line	5 ships (from 2,741 - 4,662 TEU)
NW Europe-Eastern Med service (Levante Express)	Vessel providers: MSC	5 ships (from 6,732 - 8,089 TEU)
NW Europe-Near East service (NC Levant / NEX)	Vessel providers: CMA CGM / ONE (Ocean Network Express)	5 ships (from 2,478 - 5,085 TEU)
North Europe only		
UK-Portugal service	Vessel providers: WEC Lines / Slotlers: MSC	1 ship (from 812 - 812 TEU)
Irish Sea-Iberia service (Portugal Express 2 / APEX 2)	Vessel providers: Containerships / Slotlers: CMA CGM	4 ships (from 750 - 974 TEU)
Rotterdam-Ireland butterfly service	Vessel providers: BG Freight / Slotlers: CMA CGM / Sealand Europe & Med / Eucon	3 ships (from 803 - 1,004 TEU)
UK-Germany-Poland service (Szczecin)	Vessel providers: UniFeeder / Slotlers: COSCO Shipping / OOCL	2 ships (from 801 - 917 TEU)
NW Continent-UK-Iberia service (Portugal Express / APEX)	Vessel providers: Containerships / CMA CGM	2 ships (from 1,036 - 1,036 TEU)
Antwerp-Teesport-Grangemouth service	Vessel providers: MSC / Slotlers: WEC Lines	1 ship (from 1,008 - 1,008 TEU)
Portsmouth-Channel Islands (Jersey & Guernsey) service	Vessel providers: Ferryspeed	1 ship (from 193 - 193 TEU)
Irish Sea-Bilbao services	Vessel providers: Containerships / DFDS / Slotlers: CMA CGM	fleet varies
NWC to/from Portbury, Greenock and Liverpool service	Vessel providers: MSC	2 ships (from 1,837 - 2,908 TEU)
Antwerp-Hull-Sweden service (Sun Line)	Vessel providers: Thor Shipping & Transport	fleet varies
Rotterdam-France service	Vessel providers: BG Freight / Slotlers: Maersk / Sealand Europe & Med / CMA CGM	1 ship (from 868 - 868 TEU)
Rotterdam-Southampton-Irish Sea service (ISX3)	Vessel providers: X-Press Feeders Group / Slotlers: OOCL / COSCO Shipping	2 ships (from 868 - 868 TEU)
Benelux-UK service (Butterfly East Coast UK)	Vessel providers: BG Freight / Slotlers: UniFeeder / Sealand Europe & Med / Maersk / CMA CGM	4 ships (from 646 - 974 TEU)
Rotterdam-Irish Sea service (WCUK + Ireland 2)	Vessel providers: BG Freight / Slotlers: Eucon / Maersk / Sealand Europe & Med	2 ships (from 1,004 - 1,036 TEU)

Service	Partner	Ships deployed
France-UK West Coast service (DUNK)	Vessel providers: Containerships	1 ship (from 1,380 - 1,380 TEU)
Moerdijk & Rotterdam-UK services	Vessel providers: A2B-online Container B.V. / Sloters: Viasea Shipping AS	fleet varies
Ireland service	Vessel providers: UniFeeder	2 ships (from 658 - 700 TEU)
NW Eur-Bilbao service (Scan-Baltic)	Vessel providers: Containerships / Sloters: Samskip / CMA CGM	2 ships (from 750 - 974 TEU)
P&OF Zeebrugge-Hull container service	Vessel providers: P&O Ferries	1 ship (from 648 - 648 TEU)
Scandinavia and Baltic services - NW Europe-Baltic Loop	Vessel providers: Sealand Europe & Med / Sloters: Maersk	5 ships (from 3,596 - 3,596 TEU)
Antwerp-Tilbury-France service	Vessel providers: MSC	2 ships (from 966 - 1,304 TEU)
Irish Continental Group - Benelux-Ireland services	Vessel providers: Eucon / Sloters: CMA CGM / DFDS / BG Freight / Samskip / MSC	fleet varies
Benelux-UKEC service	Vessel providers: UniFeeder / Sloters: CMA CGM	fleet varies
Rotterdam-UK service (SCX)	Vessel providers: Containerships	1 ship (from 801 - 801 TEU)
NWC-Ireland-Scotland service (ISX)	Vessel providers: Containerships / Sloters: CMA CGM	2 ships (from 803 - 907 TEU)
Ghent-Hull service	Vessel providers: I-MOTION Shipping / Sloters: Samskip	1 ship (from 658 - 658 TEU)
NL-UK-Bilbao service	Vessel providers: WEC Lines / Sloters: MSC	1 ship (from 809 - 809 TEU)
UK-Benelux-Baltic services - Loop 3 (BALT 3)	Vessel providers: Containerships	2 ships (from 1,380 - 1,380 TEU)
UK-Benelux-Baltic services - Loop 2 (BALT 2)	Vessel providers: Containerships	2 ships (from 1,380 - 1,380 TEU)
UK-Benelux-Baltic services - Loop 1 (BALT 1)	Vessel providers: Containerships	2 ships (from 850 - 956 TEU)
Bristol-Warrenpoint Line	Vessel providers: Cronus Logistics	1 ship (from 509 - 509 TEU)
UK-Moerdijk-Baltic-Norway service	Vessel providers: Viasea Shipping AS	fleet varies
Amsterdam-UK service	Vessel providers: Samskip / Sloters: SCS Multiport	2 ships (from 326 - 509 TEU)
Rotterdam-UK East Coast services	Vessel providers: Samskip	fleet varies
Intra Europe 'IBC' service	Vessel providers: ONE (Ocean Network Express)	3 ships (from 966 - 1,036 TEU)

Service	Partner	Ships deployed
Tilbury-Rotterdam-Bilbao service	Vessel providers: Containerships	1 ship (from 750 - 750 TEU)
Baltic service (Loop E4)	Vessel providers: UniFeeder / Sloters: ONE (Ocean Network Express) / COSCO Shipping / OOCL / CMA CGM	2 ships (from 1,025 - 1,036 TEU)
North Europe-Portugal-Spain service 1 (ESPT I / SPM I)	Vessel providers: WEC Lines / Sloters: MSC	2 ships (from 1,008 - 1,008 TEU)
North Europe to US East Coast - US Gulf - US West Coast		
Europe-US-ANZ Pendulum via Panama (PAD / NASP)	Vessel providers: Marfret / CMA CGM / Sloters: ANL	13 ships (from 2,259 - 2,506 TEU)
North Europe-WCNA service - AL5 (CMA CGM : California Bridge)	Vessel providers: ONE (Ocean Network Express) / Alliance partners: Hapag-Lloyd / Yang Ming Marine Transport Corp. / Sloters: CMA CGM	11 ships (from 4,922 - 4,922 TEU)
North Europe-USEC service - AL2	Vessel providers: Hapag-Lloyd / Alliance partners: ONE (Ocean Network Express) / Yang Ming Marine Transport Corp. / Sloters: ACL	5 ships (from 5,014 - 8,004 TEU)
North Europe-USEC-US Gulf service - AL3 (US flag service)	Vessel providers: Hapag-Lloyd / Alliance partners: ONE (Ocean Network Express) / Yang Ming Marine Transport Corp. / Sloters: APL	5 ships (from 7,323 - 7,323 TEU)
North Europe-US Gulf service - AL4	Vessel providers: ONE (Ocean Network Express) / Hapag-Lloyd	6 ships (from 4,432 - 6,494 TEU)
North Europe-USEC service - TAT2	Vessel providers: CMA CGM / COSCO Shipping / Evergreen Line / OOCL	5 ships (from 8,063 - 13,092 TEU)
Transatlantic service	Vessel providers: Independent Container L. (ICL)	4 ships (from 3,091 - 3,108 TEU)
North Europe to USNH - Canada (St Lawrence)		
N Eur-Canada service (Montreal Express / AT1 / GEX1)	Vessel providers: Hapag-Lloyd / OOCL / MSC / Sloters: COSCO Shipping	4 ships (from 2,808 - 5,060 TEU)
Europe-Canada - St Lawrence Coordinated Serv. (SLCS) (AT2 / GEX 2)	Vessel providers: Hapag-Lloyd / OOCL / Sloters: COSCO Shipping	4 ships (from 4,043 - 4,402 TEU)
Services Europe - South & East Africa		
SAECS (South Africa-Europe Container Service) / SRX	Vessel providers: Hapag-Lloyd / ONE (Ocean Network Express) / Maersk / Sloters: Deutsche-Afrika Linien (DAL)	9 ships (from 6,350 - 7,154 TEU)
Europe-Mascareignes-Australia-Singapore-Colombo service (Australia Express / NEMO)	Vessel providers: MSC / CMA CGM	15 ships (from 8,266 - 10,926 TEU)
Europe-South Africa service	Vessel providers: MSC / Sloters: Stinnes Linien	9 ships (from 6,336 - 12,108 TEU)

Source: *Alphaliner services database, 27 Sep 2022.*

ANNEX 3

**Report by Charles River Associates (CRA), 4 November 2022,
*Liner shipping consortia: Assessment of freight rate developments,
Prepared for World Shipping Council***

Liner shipping consortia: Assessment of freight rate developments

Prepared for World Shipping Council

Prepared for

World Shipping Council

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1. INTRODUCTION AND SUMMARY OF MAIN RESULTS

1.1. Context of the study

1. The Consortia Block Exemption Regulation (CBER or Consortia BER)¹ exempts from the application of Article 101(1) of the Treaty on the Functioning of the European Union (“TFEU”) cooperation between maritime liner carriers to provide joint services (consortia) under certain conditions in accordance with Article 101(3) TFEU.
2. The CBER notably allows carriers to jointly operate liner shipping services and engage in certain types of operational cooperation leading to economies of scale and a better utilisation of the space on vessels. Such operational cooperation cannot include price-fixing, limiting capacity, or market-sharing.
3. EU law generally bans agreements between companies that restrict competition. The economic motivation underlying the CBER is that a joint operation of liner shipping can lead to better market outcomes than without such cooperation agreements. The Commission is assessing whether to renew the CBER with respect to five criteria on effectiveness, efficiency, relevance, coherence, and added value.
4. The CBER is due to expire on 25 April 2024. We understand the European Commission (“EC”) is investigating circumstances with respect to whether any of the facts that underlay the adoption of the CBER have changed. In particular, the EC is collecting information on the market changes that have occurred since the prolongation of the CBER in 2020, notably as a result of the COVID crisis. The assessment of the EC includes an analysis of the evolution of the freight rates and service quality in the recent period.

1.2. Purpose of the study

5. CRA has been tasked by the World Shipping Council (“WSC”) to provide an economic analysis into one specific area, namely the identification of the main factors likely responsible for the recent freight rate developments.
6. After finding no deterioration in the parameters of competition (such as freight rates, availability, and reliability of service) in the period 2014-2019, the Regulation was extended in 2020 for four years. However, recent freight rate hikes have called consortia efficiencies into question. Freight rates have indeed been soaring as demand for goods picked back up after the pandemic triggered a sharp slump across sectors. Disruption from lockdowns and a shortage of workers and containers have further exacerbated matters.
7. Against this background, our analysis aims to identify the main drivers behind the recent increases in shipping rates and test whether we can identify any relationship between the presence of consortia and recent freight rate increases.
8. For this, we use a combination of descriptive and econometric analysis. Sections 2 and 3 describe the functioning of the market and provide insights into different potential variables

¹ Commission Regulation (EC) No 906/2009 of 28 September 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia), OJ L 256 29.9.2009, p. 31. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical.

impacting shipping rates. Section 4 presents our econometric framework and discusses our regression results.

9. As highlighted in previous evaluations by the EC,² efficiencies from consortia do not exclusively stem from price effects. Shipping consortia can affect and have affected a wide range of qualitative factors. However, the remit of our analysis in this report is limited to explaining the evolution of freight rates and the potential role played by consortia in that respect.

1.3. Main findings

10. We find that there has been a major increase in freight rates end of 2020 through 2021 on all major European trade routes. The price hike appears to be primarily driven by a strong decline in effective capacity relative to demand. The COVID pandemic and its aftermath has caused supply frictions (e.g. through port congestions) while at the same time boosting demand (e.g. through higher e-commerce sales). This has led to serious supply and demand imbalances, driving up freight rates.
11. **We find that the disruption is unrelated to the presence of consortia. Consortia have neither caused the recent capacity decline, nor do we find any evidence relating the presence of consortia to higher freight rates. The key findings are confirmed both by a descriptive data assessment as well as thorough econometric modelling.**

Descriptive analysis

12. The data examined shows a spike in freight rates in 2021. This is true for all major seven European trade routes, although the magnitude of the rate varies ranging between +150% and +600% depending on the specific route.³ More recent price data for 2022 suggests that freight rates have first remained at a high level throughout 2021 but have started decreasing in 2022 (**section 2.2**).
13. There is a variety of variables that we test as explanatory factors of freight rate variations. Section 3 investigates measures of the presence of consortia on the routes, cost variables, demand variables (e.g. total shipping volumes or global e-commerce sales), supply variables (capacity adjusted for delays), and combined demand and supply variables (demand relative to supply or so-called capacity utilisation rates).
14. **We do not find evidence indicating that consortia presence has caused the increase in freight rates.** Our measures for consortia presence (a measure for consortia concentration and the capacity share of consortia) are relatively constant over time while freight rates have surged recently. Also, when comparing freight rate hikes and consortia concentration "pre-" and "post-pandemic" by trade-route, there is no visible relationship indicating that freight rates increased more on routes with higher consortia presence (**section 3.1**).
15. **On the other hand, there is strong evidence that freight rate increases were the result of changes in exogenous factors.** In particular, we find that the COVID pandemic has triggered demand and supply shifts that likely explain the freight surges.

² See, e.g., https://ec.europa.eu/competition/consultations/2018_consortia/1_en_dts_evaluation.pdf

³ The seven routes analysed are: Asia-North Europe, Asia-Med, North Europe-North America, Med-North America, Europe-East Coast South America, Europe-West Coast South America, and Europe-Oceania.

- First, bunker costs started to sharply increase shortly before the freight rate surge. Bunker fuel is the main type of fuel used aboard of container ships and the main variable cost of carriers, so as a result one would expect an increase in freight rates (**section 3.2**).
 - Next, we find that demand for shipping increased, as e.g. consumers shifted their purchasing online during lockdowns. In particular, e-commerce sales grew rapidly during the pandemic. As is well known from economic theory, an increase in demand generally translates into an increase in price (**section 3.3**).
 - Simultaneously, supply frictions in the shipping industry have increased significantly, as e.g. policies addressing COVID outbreaks have disrupted supply chains. We capture this effect with a so-called “capacity absorption factor” that estimates the percentage of inoperative capacity due to vessel delays. During the pandemic, delays were often induced by port closures, port congestions, or labour shortages. This inoperative capacity increased more than ten-fold and is almost perfectly correlated to the increase in freight rate. We further show that the increase in “lost capacity” itself is unrelated to consortia presence on the specific routes. In sum, we observe a decrease in effective supply (especially relative to demand), which all else equal is expected to translate into an increase in freight rates (**section 3.4**).
 - Lastly, we combine demand and supply factors and consider the impact of capacity utilisation rates on prices. We use previous demand and supply considerations to compute the effective utilisation rate defined as the ratio of observed volumes shipped over capacity adjusted for capacity absorption due to delays. We find that this effective utilisation rate is increasing during the pandemic because of a decrease in the adjusted capacity and an increase in volumes/demand. This decline in effective capacity relative to demand can be expected to be a major driver of the surge in prices. This seems confirmed empirically by our data that shows a strong correlation between utilisation rates and price surges. Moreover, note that the use of capacity utilisation rates based on *observed* demand (volumes) is likely conservative in that it may underestimate the *actual* demand which in part could not be served in practice (hence is not observed in actual volumes shipped) precisely due to insufficient capacity (**section 3.5**).
16. In the round, the evidence at hand appears to confirm that freight rates have surged primarily due to external factors such as increased bunker costs, increased demand, the COVID pandemic, and reduced capacity relative to demand. While freight rate surges can be explained by changes in such exogenous factors, the presence of consortia on routes does not appear to have played a role.

Econometric analysis

17. We estimate the effect of consortia presence on freight rates by means of an econometric analysis to further support the findings of the descriptive assessment (**Section 4**). We use an Ordinary Least Squares (OLS) regression framework to estimate the effect of consortia presence on freight rates for the period from January 2017 to September 2022 for the seven main European East-West and North-South trade routes. We use two alternative measures, measuring both consortia concentration and consortia market shares, to capture consortia presence. For both measures we find that:

18. **Consortia presence is unrelated to freight rates surges.** If anything, the consortia measures are sometimes found to have a negative effect on the rate charged in certain econometric specifications.
19. **Supply frictions and external demand factors have been driving the freight rate development** in recent years. In particular we find that a demand shift captured by container throughput and e-commerce sales in combination with a supply decline measured by the degree of port congestions or delays exerted positive price pressure.
20. The findings are robust to a variety of specifications controlling for different sets of supply and demand variables. We therefore conclude that the econometric results support the findings of the descriptive analysis: recent freight rate hikes are unrelated to consortia presence but result from external supply and demand shocks primarily caused by the COVID pandemic.
21. After showing that supply frictions are a key driver of the freight rate hikes, we show that these frictions are not caused by consortia. Estimation results suggest that if anything, consortia presence may have increased the effective capacity by decreasing the degree of congestions and delays as found in certain specifications (**Section 4.4**). Instead, we find that these supply frictions are driven by exogenous factors primarily related to the COVID pandemic. More, a demand shift represented by e-commerce sales seems to have aggravated supply frictions, leading to more vessel delays and port congestions.

2. THE RECENT MARKET DEVELOPMENT AND GLOBAL SHIPPING CONSORTIA

2.1. Data presentation

22. The data used for this analysis comprises data on seven of the most important global shipping routes. These are: Asia-North Europe, Asia-Med, North Europe-North America, Med-North America, Europe-East Coast South America, Europe-West Coast South America, and Europe-Oceania.
23. Depending on data availability, all descriptive statistics and econometric results in this report cover at least the period January 2017 to July 2022. If we do not include monthly TEU volumes or do not weight with volumes, our analysis can be extended until September 2022. Also, our freight rate analysis is based on 40-foot ("40ft") containers since they constitute the majority of containers, and all benchmarking focuses on them.
24. The capacity data from Drewry is the most granular data available to us. It is at service-level and provides weekly TEU capacities for all services operating on the seven global shipping routes. It also flags alliances, but not vessel sharing agreements or slot charter agreements. In order to stay as close to the consortia definition covered by the CBER as possible, we thus create our own consortium variable. For more detail, see section 2.3.
25. Drewry only reports nominal capacity data which due to delays and port congestion were less meaningful since early 2020. Hence, we incorporate capacity absorption data from Sea-Intelligence which allows us to adjust the capacity figures from Drewry to account for supply chain issues during the COVID pandemic and construct a measure of *effective* capacity.
26. The data on volumes from CTS contains monthly total TEU volumes on the seven trade routes.

27. As regards container freight rates, our dataset includes monthly indicative rates for 12 of the main port-to-port pairs⁴ from Drewry. It provides numbers for the all-in rate (the freight rate charged to customers) and its different components: the base rate, the bunker adjustment factor, and the terminal handling charges. In our analysis, we focus on the all-in rate.
28. We further complement these data with various “control variables” of factors likely to affect prices. We include monthly data on bunker costs, COVID cases, a global shipping index, and e-commerce sales to control for effects of demand and supply.
29. Bunker fuel is the main variable cost of carriers. In our analysis, we use 380cSt Bunker costs in Rotterdam. Rotterdam is Europe’s biggest bunkering port and one of the three largest in the world. Bunker costs in other ports closely track the rates set in Rotterdam.
30. The COVID pandemic can influence shipping rates in a multitude of ways: e.g., a high number of COVID cases can cause severe personnel shortages in ports or lockdowns and other restrictions can complicate the operational activities of ports and shipping operators. Hence, we have added new COVID cases per million inhabitants to our data from Our World in Data, calculated on a monthly level as the unweighted mean between origin and destination continent.

Brief overview of the seven routes analysed

31. Based on shipping capacity, the Asia-North Europe and Asia-Med trade routes are the most important shipping routes from a European perspective. Taken together they comprise more than 65% of the available shipping capacity of routes in our dataset.
32. Information on current shipping capacity, volumes, and freight rates (as of July 2022) are shown in Table 1. As can be seen in the table, there is substantial variation in capacities, shipped volumes, and freight rates across the seven routes.

⁴ E.g. Shanghai-Rotterdam, Shanghai-Genoa, Rotterdam-Houston, or Rotterdam-New York.

Table 1: Descriptive overview of capacity, volumes, and pricing across trade routes

Trade	Capacity (TEU)	Effective Capacity (TEU)	Monthly shipped volumes (TEU)	40ft Dry freight rate (\$)	Share of total capacity (%)
Asia-North Europe	257,454	235,001	940,356	8,503	44.67%
Asia-Med	125,531	119,085	475,687	11,470	21.75%
North Europe-North America	86,383	75,072	288,178	7,630	14.99%
Med-North America	56,827	47,792	193,301	10,525	9.86%
Europe-ECSA	30,192	28,125	81,702	3,380	5.24%
Europe-WCSA	13,324	13,194	35,050	5,300	2.31%
Europe-Oceania	6,863	n.a.	880	8,740	1.20%

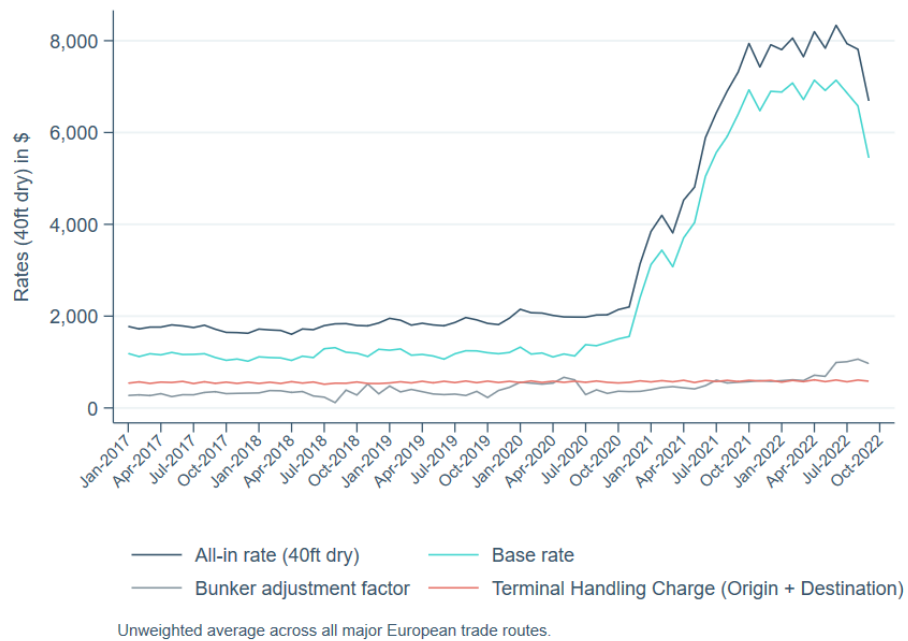
Source: Capacity data from Drewry. Capacity absorption data from Sea-Intelligence. Volume data from CTS. Price data from Drewry. Values per July 2022.

2.2. Recent freight rate development

33. The all-in freight rate used in our analysis is comprised of many components including the following main ones:⁵ (i) the “base rate” which is the cost of shipping a container from one point to another, (ii) “terminal handling charges” (THC) which are fees charged by shipping terminals at different ports for various services they provide (e.g., storage and positioning of containers before they are loaded on a vessel could be part of the origin terminal handling charge in our data) and, the bunker adjustment factor (BAF) which is an additional surcharge for shipping operators to compensate for the fluctuation in fuel prices.
34. As can be seen in Figure 1, there is only limited variation in the THC and BAF over time. These two variable cost components do not explain systematic freight rate trends. Our assessment focuses on the all-in freight rate, which does not only cover all cost components, but also provides the largest variation.
35. Additionally, there is substantial amounts of missing data on BAF and THC. For some routes, some prices are not available at all (e.g. the BAF is not available on Europe-WCSA or Asia-Med). For others, some prices are missing at certain times. The figure below is an average over those routes for which data is available. Therefore, it is not possible to only look at the “base rate” in our analysis which is another reason for us to focus on understanding the all-in rate fluctuations.

⁵ Other components are numerous other surcharges such as the currency adjustment factor, peak season surcharge, port dues, port security charge, carrier security charge, Suez Canal transit fee (if applicable), Panama Canal surcharge (if applicable), Guld of Aden surcharge (if applicable), Port Congestion surcharge. Note that this list is not exhaustive and additional surcharges are included.

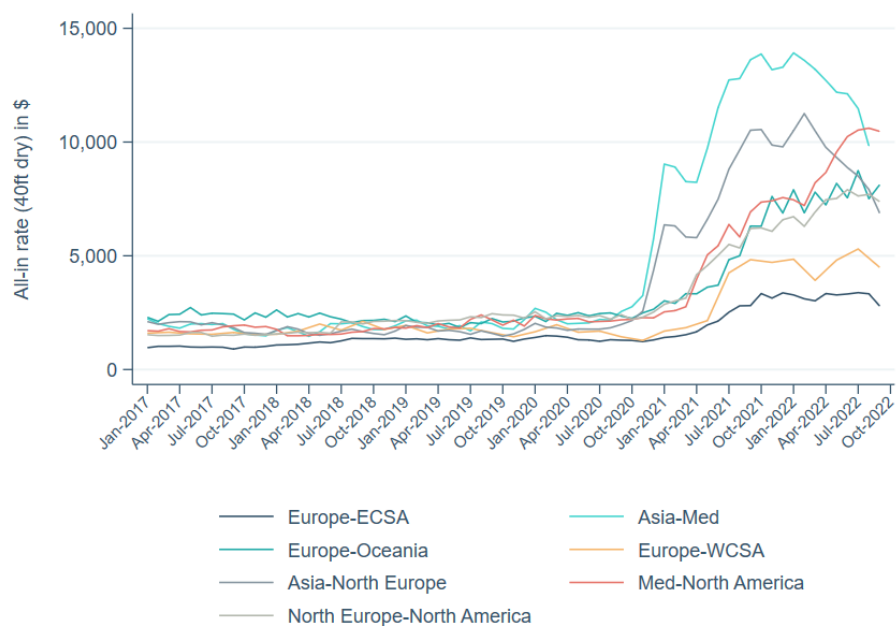
Figure 1: Average freight rate components across all major European trade routes



Source: CRA visualisation based on Drewry freight rate data.

36. Figure 2 shows that freight rates on all major European trade routes saw a massive increase from mid-2020. The freight rate surge has started earliest on the Asia-Europe trade routes and was followed with a delay of several months by freight rate increases on the remaining, major European routes. Towards the end of 2021, freight rates have started to fall again across trade-routes.

Figure 2: Average freight rates on European trade routes



Source: CRA visualisation based on Drewry freight rate data.

37. There is a large spread in the extent of the freight rate increase depending on the trade route. While freight rates on the main Asia routes have increased more than six-fold, freight rates on North Europe-North America and Europe-ECSA have increased less than three-fold.

2.3. Global shipping consortia

38. We define consortia for the purpose of our assessment in line with the consortia definition covered by the CBER as:
39. **Vessel Sharing Agreements (VSAs):** Vessels are owned and/or operated by different carriers which engage in joint optimisation of capacity, ship scheduling and route assignment.

Alliances, which are essentially a bundle of VSAs between the same carriers operating on a global scale.

Pure Slot Charter Agreements (SCAs) where a carrier “rents” container slots on a vessel owned by a different carrier are not included in our definition. This is in line with CBER Art. 2(1), defining consortia as “interrelated agreements between two or more vessel-operating carriers to rationalise their operations,”⁶ which goes beyond the scope of pure SCAs. A VSA can include one or several SCAs – this way SCAs would be captured by our consortia definition.

40. In practice, we use Drewry’s Capacity Data to identify consortia presence on the main European trade routes. We define a consortium as either global alliances (captured by Drewry) or services that are operated by two or more carriers (not captured by Drewry as consortia). Additionally, we have manually revised the carrier combinations for each service over time to account for past mergers.

3. FREIGHT RATE VARIATIONS CAN BE EXPLAINED BY A RANGE OF EXOGENEOUS FACTORS

41. There is a wide range of factors that could in theory influence shipping rates. We distinguish between five categories of variables:
- **Measures of “consortia presence” (section 3.1).** These variables are aiming at capturing the presence of consortia on the route. There is no simple or unique way of defining a synthetic measure of the degree of consortia presence on a route. For that reason, we rely on two distinct metrics, including the share of capacity on the route that is operated by consortia.
 - **Cost variables (section 3.2).** These include bunker cost, the BAF and THC charges.⁷ The main variable relevant in our analysis is bunker cost that is estimated to represent 50-60% of total shipping operating costs.⁸

6 Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0906-20200414>

7 See definition in section 2.2.

8 From: <https://www.morethanshipping.com/fuel-costs-ocean-shipping/>

- **Demand variables (section 3.3).** Demand variables will capture that freight rates are expected to increase as demand for freight increases. In practice, we measure shipping demand using a range of variables such as the global container shipping throughput index and global e-commerce sales.
- **Supply variables (section 3.4).** We include supply variables in our model that will capture the availability of ships in ports. This is particularly crucial considering the significant disruptions that occurred in the market recently. In particular, we measure the share of capacity that was not available due to port disruptions or delays (see the so-called “capacity absorption” share). This measure allows us to define *effective* capacity, i.e. the nominal capacity adjusted for the capacity absorption factor.⁹
- **Combined demand and supply variables (section 3.5).** Some variables are related to both demand and supply levels. This might be the case for example of the COVID crisis that affected both demand (e.g. via increased e-commerce sales) and supply (e.g. via disruptions in ports) with varying degree and lags. Also, rather than demand or supply levels themselves, economic theory suggests that it is the level of demand relative to capacity that will have the most impact on freight rates. We thus define an effective capacity utilisation rate variable that corresponds to the ratio between demand and effective supply and assess whether freight rates seem to be driven by variation in utilisation rates on the route.

42. These five categories of factors are presented in the remainder of this section.

3.1. Consortia presence and measures of concentration

Definition of the variables of interest

43. We have defined two main metrics to measure the degree of consortia presence on the routes and over time.
44. One of these variables relies on Herfindahl-Hirschman indices (HHI). The HHI is a standard measure of concentration that is typically used in mergers. It ranges from 0 to 10,000, with a higher value indicating a more concentrated market. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2$). We have considered extending the notion of HHI to consortia.¹⁰ However, it is important to note that this is only the mechanical application of a mathematical formula to consortia and does not suggest in any way that operators within a given consortium are acting as a single operator. Consortia members are of course highly restricted with respect to the dimensions, notably price, over which they can exchange information and cooperate. With this limitation in mind, it remains useful to extend the notion of HHI to consortia for the specific purposes of our analysis.
45. In practice, we have defined **two main variables of interest** that are related to consortia concentration:

⁹ Specifically, effective capacity = (1-capacity absorption factor) * capacity.

¹⁰ HHI variables are calculated based on capacity values. We note that the market concentration – to be interpretable from an antitrust perspective – should be measured in terms of actual volumes shipped – not capacity. We default to capacity due to data limitations.

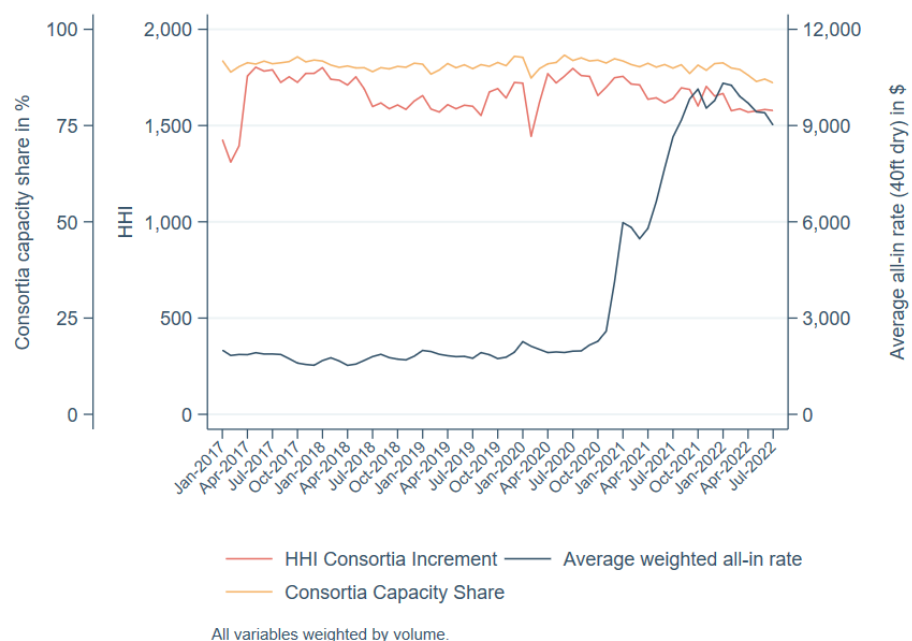
- **Consortia Capacity Share (%).** This is the total capacity share of all consortia on the route. It has the advantage of its simplicity but does not account for the structure of consortia on each route: the capacity share will be the same for one consortium of 30% or two consortia of 15% each.
- **HHI Consortia Increment.** This variable is defined as the difference between the HHI calculated by replacing firm shares with consortia shares and the standard “HHI Carriers” (the HHI calculated based on individual operators’ shares). This measure isolates the effect of consortia from the general market concentration driven by the operators’ own capacity shares. It therefore captures the increment of “concentration” on the route that can be deemed *consortia-specific*.

Out of these two main variables of interest, we believe that the HHI Consortia Increment is better suited to measure the influence of consortia concentration on freight rates. In our descriptive and econometric analysis, we will therefore focus primarily on the HHI Consortia Increment.

Relationship between consortia presence and freight rate developments

Figure 3 compares the weighted freight rate development with the Consortia Capacity Share and the HHI Consortia Increment. Based on a visual inspection, we do not see a (positive) relationship between either of the two measures of market concentration and changes in freight rates. Both are almost constant, and the Consortia Capacity Share is even slightly decreasing towards the end of the considered time period.

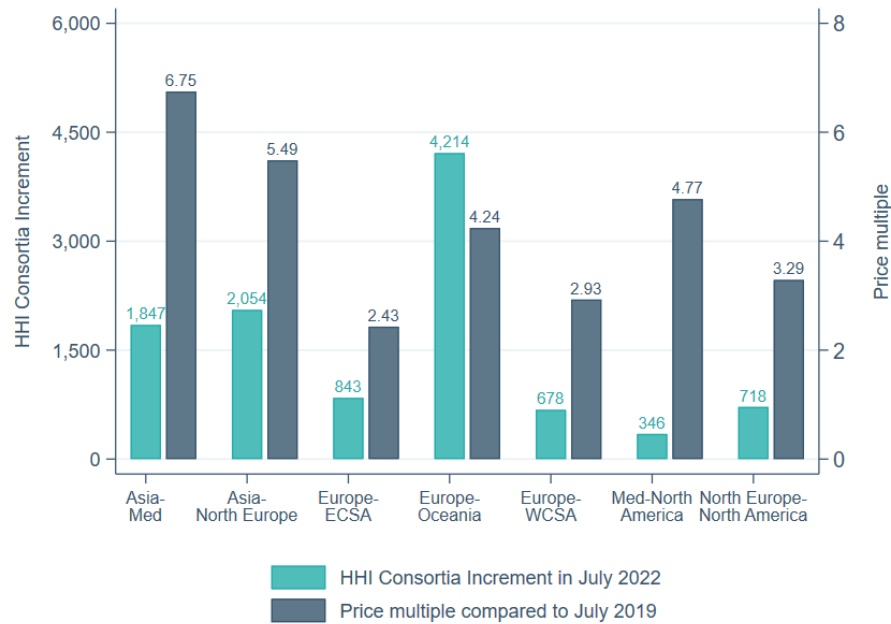
Figure 3: Overview of consortia presence measures and freight rates



Source: CRA visualisation based on own calculations and Drewry capacity and freight rate data.

46. Next, we provide a cross-section comparison of the HHI Consortia Increment relative to freight rate surges. Figure 4 compares the consortia presence and freight rate increases between July 2022 and July 2019 on the seven shipping routes under analysis. There is no visible relationship between freight rate increases and the presence of consortia.

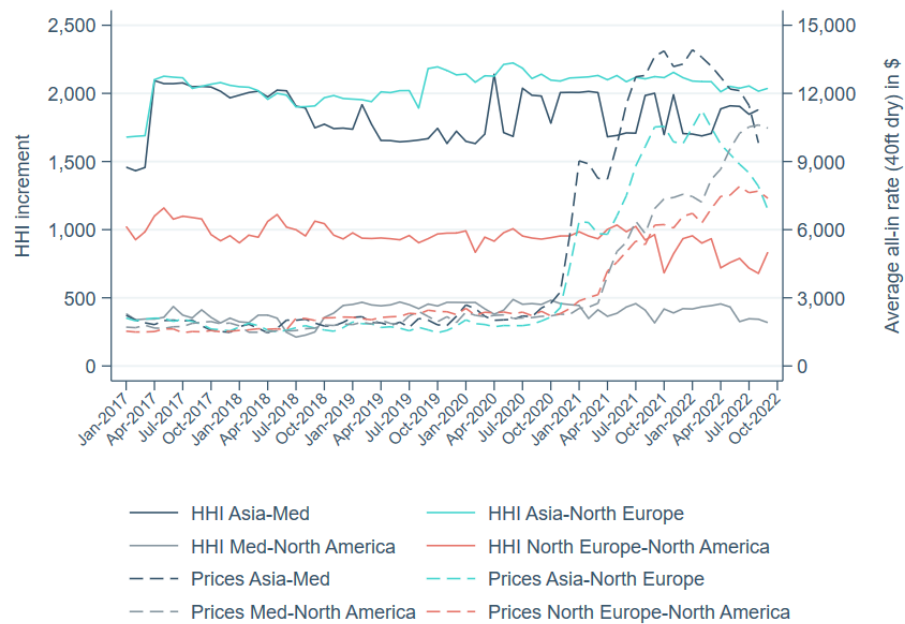
Figure 4: Comparison of HHI Consortia Increment and freight rate multiples in July 2022 compared to July 2019 per route



Source: CRA visualisation based on Drewry capacity and Drewry freight rate data.

47. Figure 5 displays the development of the HHI Consortia Increment and freight rates on the four main individual shipping routes. Again, consortia do not seem to play a role in the freight rate hikes seen recently.

Figure 5: Comparison of HHI Consortia Increment with Prices on four main routes.



Source: CRA visualisation based on Drewry capacity and freight rate data.

48. Overall, we find no descriptive evidence indicating that consortia presence has led to the increase in freight rates. On the other hand, we will see in the following sections that there is strong evidence that freight rate increases were the result of exogenous factors such as cost increases, demand surge and supply disruptions.

3.2. Cost variables

49. The price (i.e., the freight rate charged to customers) has two main “cost” components: terminal handling charges (THC) and the bunker adjustment factor (BAF). However, as established in section 2.2, both the bunker adjustment factor and the terminal handling charges have been remarkably stable over the last five years.
50. As such, they cannot explain systematic freight rate trends and we turn to actual bunker costs to potentially explain freight rate developments. This is sensible since fuel costs are one of the most important components of the variable costs of cross-ocean shipping. Bunker fuel is the main type of fuel used aboard of freight ships and the main variable cost of carriers, comprising as much as 50 to 60% of the total shipping operating costs.¹¹
51. We would expect to see a strong correlation between bunker costs and freight rates. As can be seen in Figure 6, the data suggests such a relationship post-2020.

Figure 6: Development of Rotterdam bunker costs and global freight rates



Source: CRA visualisation based on bunker costs from Bloomberg BUNKRD38 Index and freight rate data from Drewry.

3.3. Demand variables

52. We consider various variables aiming to capture the effect of changing total demand for shipping. These are volumes, a global container shipping throughput index, and e-commerce sales.

11 From: <https://www.morethanshipping.com/fuel-costs-ocean-shipping/>

53. Note that shipping volume data is a questionable proxy for the demand for shipping capacity. Shipped volumes are an outcome of demand, supply, and prices rather than a pure measure of demand. Thus, there exists an underlying “simultaneity” of volumes affecting freight rates and vice-versa. Notably, actual volumes are constrained by supply (i.e., the available capacity) implying that in the absence of supply constraints actual volumes may have increased more than they did. In that sense we may underestimate actual demand levels by looking at realised volumes.
54. The **global container shipping throughput index** includes the information on container throughput in 89 international ports. It accounts for around 60 percent of global container throughput.¹² Figure 7 displays the development of the global shipping throughput index against average freight rates. While showing pronounced fluctuation due to seasonality effects, it is clearly visible that there is a consistent upward trend.

Figure 7: Development of the Global shipping throughput index and global freight rates



Source: CRA visualisation based on Drewry price data and Drewry Global container shipping throughput index.

55. Data on e-commerce sales show a similar, yet even more pronounced trend. Many of the products sold through e-commerce platforms such as Amazon or Alibaba are not manufactured in the European Union. An increase in e-commerce purchases by businesses and consumers may thus lead to an increase in demand for shipping.
56. E-commerce was already growing quite rapidly before the outbreak of the pandemic. However, according to McKinsey, e-commerce grew two to five times faster during the pandemic than it did before, further indicating the pandemic accelerated the increase in

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From: <https://www.statista.com/statistics/913398/container-throughput-worldwide/>

demand for these sales channels.¹³ Furthermore, data from eMarketer shows that e-commerce sales grew by 16% in 2021 and 27% in 2020.¹⁴

57. Table 2 displays the annual global e-commerce sales (in dollars) from 2018 to 2021 and their respective year-over-year growth rates.

Table 2: Annual global e-commerce sales (in billion \$) and YoY growth

Year	Global e-commerce sales (in billion \$)	YoY variation (in billion \$)	YoY growth
2017	2,382	-	-
2018	2,982	600	25%
2019	3,351	369	12%
2020	4,248	897	27%
2021	4,938	690	16%

Source: eMarketer

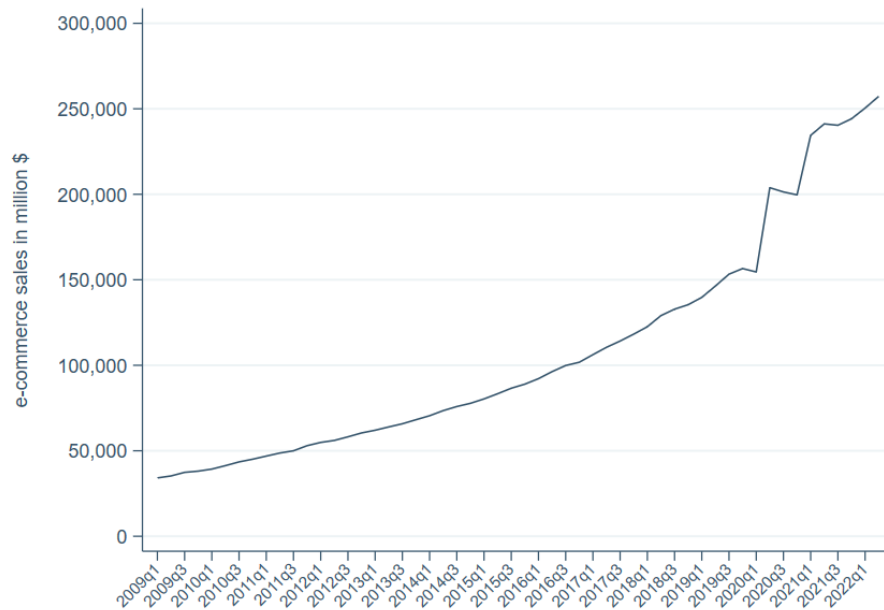
58. Figure 8 displays based on US data that there has been a long-term trend towards more online shopping. While growth rates have been steady for many years, there was a very sharp increase at the beginning of the pandemic where more additional goods were sold in one quarter than in the previous three years combined. This sharp increase was right before freight rates started to soar. Importantly, this increase was not a one-off effect since growth rates stayed high and are still larger than in the ten years before the pandemic. While we are not aware of data over such a long period in the EU, there is both qualitative as well as quantitative evidence that developments in the EU have been similar. For example, Statista estimates that e-commerce sales in Europe have grown by 8.2% in 2018, 9.3% in 2019, 31% in 2020, and 16.2% in 2021.¹⁵

13 From: <https://www.mckinsey.com/featured-insights/coronavirus-leading-through-the-crisis/charting-the-path-to-the-next-normal/how-e-commerce-share-of-retail-soared-across-the-globe-a-look-at-eight-countries>

14 From: <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>

15 Source: <https://www.statista.com/outlook/dmo/ecommerce/europe#revenue>

Figure 8: US e-commerce sales (in million \$)



Source: CRA visualisation based on <https://www.statista.com/statistics/187443/quarterly-e-commerce-sales-in-the-the-us/>

3.4. Supply variables

3.4.1. Disruption of supply chain

59. One of the (side-)effects of the COVID pandemic was a sharp increase in supply frictions in many industries. Due to its complexity and transcontinental nature, the container shipping industry was hit especially hard. We capture this by including a capacity absorption share variable from Sea-Intelligence. This is an estimate of the share of the deep-sea container liner fleet that is rendered inoperative due to container vessel delays, irrespective of whether the delays are caused by port closures, port congestions, labour shortages, engine failures, landside strikes, inclement weather, vessel or network issues, or other factors. Sea-Intelligence does not track this metric for the Europe-Oceania route given its low share of approximately one percent of worldwide trade. Henceforth, we exclude this route from our analysis when considering the capacity absorptions share.
60. A simple illustrative example shows how the capacity absorption factor (%) or lost capacity more simply put, is calculated: *“Imagine a 20,000 TEU container vessel arriving 6 days late in port. If the vessel had arrived on time, those additional 6 days could have been used to move cargo, leading to a loss of 120,000 TEU-days, relative to the intended liner schedule. Over a 30-day month, that vessel would have produced 30 days * 20,000 TEU = 600,000 TEU-days, for a relative loss of 20%.”*¹⁶

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Source: Sea-Intelligence capacity absorption factor methodology.

61. Figure 9 displays how this “lost” capacity has increased during the COVID pandemic. It also presents a two-month lag which – besides some seasonal effects – is almost perfectly correlated with the average all-in rate.

Figure 9: Development of capacity losses and global freight rates



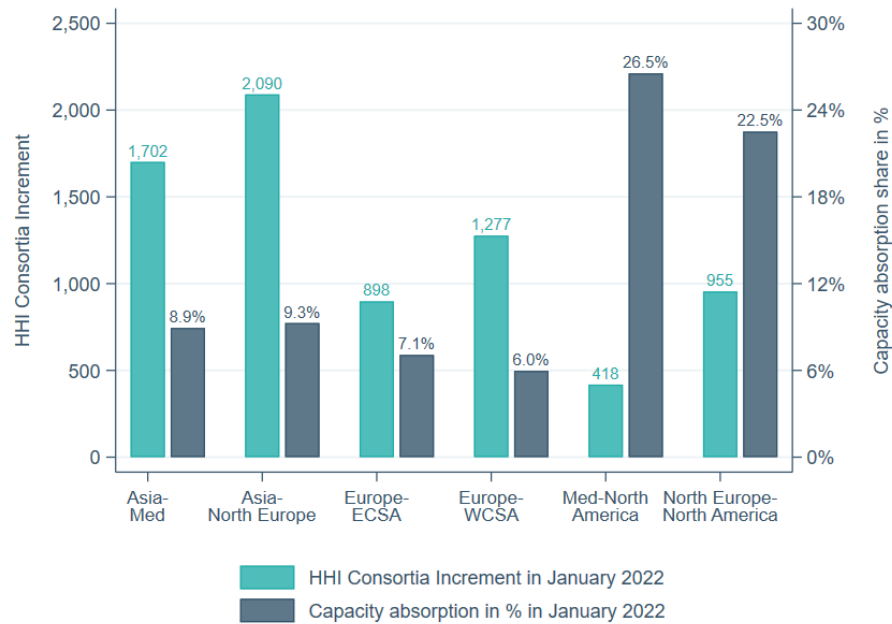
Source: CRA visualisation based on Drewry price data and Sea-Intelligence capacity absorption data.

3.4.2. Relationship between capacity losses and consortia concentration

62. It seems that effective capacity was reduced relative to demand levels on the routes. While shifts in demand levels are undeniably “exogenous”, one might wonder whether consortia could have played a role in the reduction of capacity around that time. While there is no qualitative evidence that this would be the case, we can test this proposition empirically.
63. Figure 10 assesses whether there is any correlation between recent increases in capacity absorption shares and the presence of consortia on routes. Specifically, it compares the HHI Consortia Increment with capacity absorption shares as of January 2022 – the month when lost capacity was at its peak and freight rates were close to their peak.¹⁷
64. We find no evidence of correlation between consortia presence and capacity absorption. For example, the highest capacity absorption factors are observed on North America routes where consortia concentration is relatively lower. More specifically, the highest capacity absorption factor is observed on Med-North America where concentration is lowest in terms of the HHI Consortia Increment. On the other hand, the highest HHI Increment can be found on the Asia-North Europe route whereas this route has relatively low levels of capacity absorption.

¹⁷ We note that the month that is chosen for this analysis has no impact on the results which are robust for different selected months.

Figure 10: Comparison of HHI Increment and the capacity absorption share in January 2022 per route



Source: CRA visualisation based on Drewry capacity data and Sea-Intelligence capacity absorption data.

65. Hence, we find that since mid-2020, the capacity absorption share has stopped fluctuating at around 3% and increased massively to more than 16% in January 2022. Since then, lost capacity has started to decline again. We find no evidence that this trend is in any way related to consortia presence – whereas it is consistent with COVID-induced disruptions such as port congestion.

3.5. The combined effect of demand and supply and the use of capacity utilisation rate variables

66. As explained in previous sections, the COVID pandemic has had significant impact on the shipping industry. In the context of this study, it has influenced both the supply and demand side. During the pandemic consumer demand has increased, leading to rising demand for shipping. Simultaneously, lockdowns and other less stringent measures to contain COVID limit the supply of freight shipping through longer processing times at ports and reduced labour supply. This limited supply is expressed in the high capacity absorption share.
67. Figure 11 compares COVID cases and freight rates. At a high level it appears that there is a positive correlation between the observed freight rate surges and the number of COVID cases. Although the number of COVID cases may not be “directly” related to freight rates, we have to recognise that there is a noticeable correlation between the two effects, both being driven by unprecedented forces.

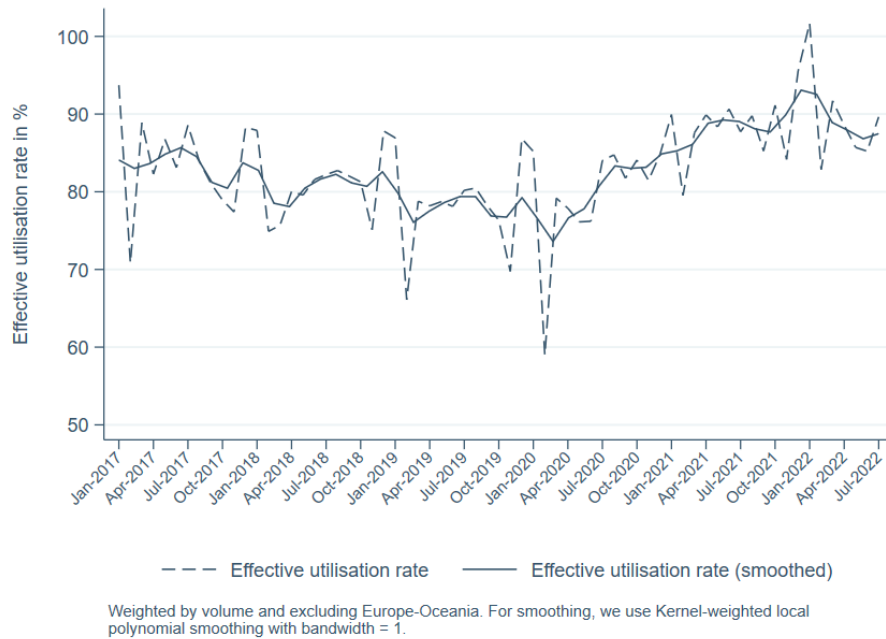
Figure 11: Comparison of COVID cases and global freight rates



Source: CRA visualisation based on Drewry price data and Our World in Data COVID data.

68. Aiming to define a variable that would be more specific to the shipping industry, the collection of capacity absorption data allows us to calculate a measure of **effective capacity** (i.e., the capacity from Drewry adjusted for the absorption factor to account for the inoperative capacity). We use the effective capacity to calculate the effective utilisation rate defined as the ratio between actual volumes shipped over effective capacity. An effective utilisation rate of 1 (or 100%) would indicate that all *available* capacity is being used. It is important to note that the effective utilisation rate is a function of both supply and demand variables and changes in utilisation rates can be caused by either of the two (or both).
69. Figure 12 illustrates the increase in utilisation rates that happened since the beginning of the COVID pandemic.

Figure 12: Effective utilisation rate



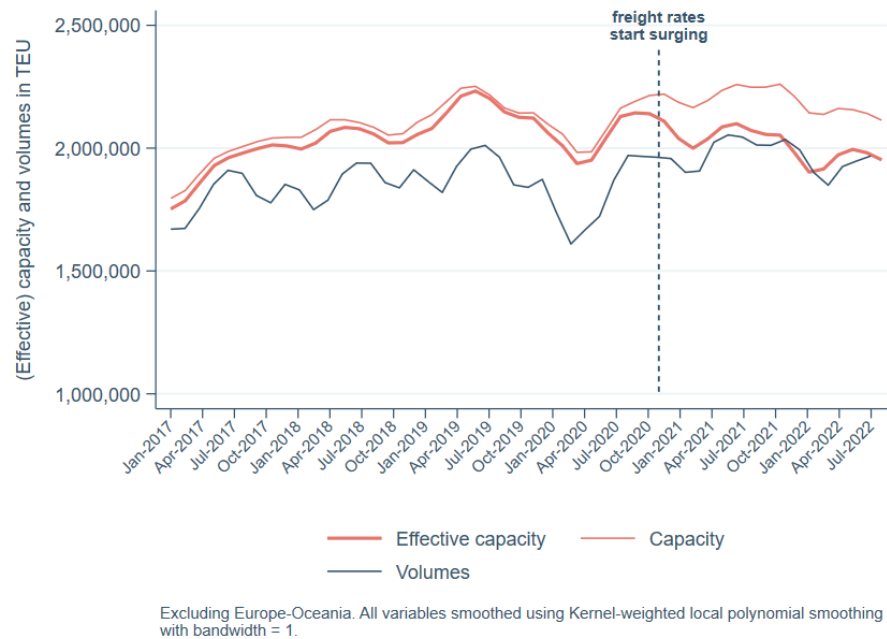
Source: CRA visualisation based on own calculations, Drewry capacity data, and Sea-Intelligence capacity absorption data.

70. To obtain an increase in the effective utilisation rate either volumes must increase, or effective capacity must decrease. Figure 13 shows that since the beginning of 2020 volumes have increased slightly. Simultaneously, due to a comparatively much larger increase of the capacity absorption factor, the effective capacity has declined relative to the nominal capacity. Hence, there was less effective capacity and larger effective utilisation rates. Importantly, liner shipping companies were unable to increase capacity since all available vessels were utilised and there was a lack of new shipping containers.¹⁸ Many carriers reacted by ordering new container ships which however take years for production. For example, in 2021, container ships with a total capacity of about 1.94 million TEUs were sold worldwide. This represents an increase of 140 percent compared with 2020 when roughly 810,000 TEUs worth of container ships were sold globally.¹⁹ This provides further evidence that there has been a strong decline in effective capacity relative to demand.

¹⁸ Source: see, e.g. <https://www.vox.com/recode/22832884/shipping-containers-amazon-supply-chain>

¹⁹ Source: <https://www.statista.com/statistics/1290683/annual-sales-of-container-ships-worldwide/>

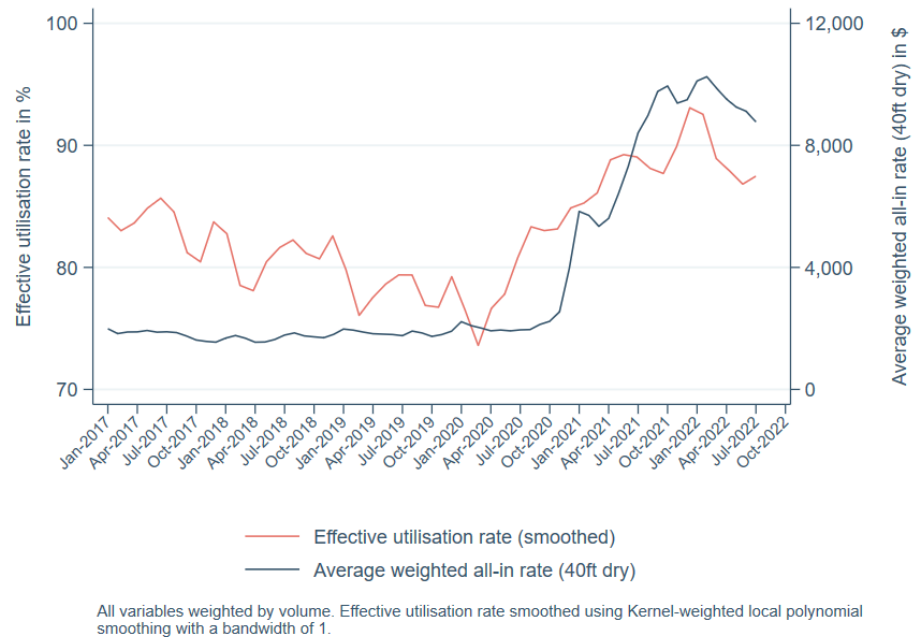
Figure 13: Comparison of (effective) capacity and volumes



Source: CRA visualisation based on Drewry capacity data, CTS volume data, and Sea-Intelligence capacity absorption data.

71. We would like to stress again that using volumes as a proxy for demand misses the actual increase in demand. Thus, basing our effective utilisation rates on observed demand (i.e. actual volumes) is likely conservative since it underestimates the actual demand which in part could not be served in practice precisely due to supply constraints (i.e. insufficient capacity). Consequently, the actual increase in the ratio of demand and supply was probably even more pronounced than the one captured by the effective utilisation rate since volumes would have greatly increased in the absence of supply constraints.
72. We investigate descriptively the relationship between our measure of effective utilisation and the development of freight rates in Figure 14. This builds on section 3.4.1 where we found a high correlation between the capacity absorption factor and the average weighted all-in rate. Unlike for unadjusted utilisation rates, we observe a strong correlation between effective utilisation rates and freight rate surges. This holds despite the conservative nature of our demand supply considerations. Interestingly, a lagged utilisation rate would show an even stronger correlation. This appears sensible given that past utilisation rates can be expected to drive future price variations. In sum, it seems very likely that the increase in the effective utilisation rate has caused the freight rate surges.

Figure 14: Comparison of the effective utilisation rate and freight rates



Source: CRA visualisation based on own calculations, Drewry capacity data, and Sea-Intelligence capacity absorption data.

73. Additionally, we have also examined in sections 3.1 and 3.4.2 whether there is any indication that consortia may have caused an increase in prices or a decrease in effective utilisation rates. First, we observed no visual relationship between freight rate increases and the presence of consortia. For example, while consortia presence stayed constant, freight rates sharply increased. Further, we investigated the relationship between capacity losses and consortia concentration. There, we found no evidence of correlation between consortia presence and capacity absorption. In fact, the highest capacity absorption occurred on the least concentrated route in terms of HHI Consortia Increment, namely, Med-North America. We conclude that there is no evidence that consortia were responsible for either the increase in freight rates or the decrease in effective utilisation. This holds irrespective of the variable used to measure concentration.
74. On the other hand, the observed freight rate surges are entirely consistent with COVID-induced disruptions. There is strong evidence showing that freight rate increases were the result of changes in different exogenous factors: these include cost increases (e.g. rising bunker costs), demand surges (e.g. unprecedented growth of e-commerce sales), and supply disruptions. The disturbances caused by the COVID pandemic led to severe increases in capacity absorption which resulted in less available capacity. However, there was simultaneously also much more demand as discussed in 3.3. Therefore, the recent freight rate hike can be explained by basic microeconomic supply and demand considerations: much more demand and less effective capacity. Our descriptive analysis concludes that exogenous factors, not consortia, caused the freight rate increases.

4. ECONOMETRIC ASSESSMENT

75. In the previous sections we have shown that there exists no descriptive evidence that suggests a link between consortia presence and the freight rate hikes in recent years.

Instead, freight rate hikes seem to be the result of a supply and demand imbalance primarily caused by the COVID pandemic.

76. In the following section, we confirm this proposition by means of an econometric assessment which allows us to consider all potential factors simultaneously and disentangle effects. We first show that consortia presence (measured by the HHI Consortia Increment and the Consortia Capacity Share) is unrelated to the recent increases in freight rates but the recent surge was indeed driven by external supply and demand factors. In a second step, we confirm that indeed external factors related to the COVID pandemic have caused supply frictions, decreasing the effective capacity. The presence of consortia itself has not caused a decrease in capacity. On the contrary, there is some evidence that consortia might have had a mitigating effect, increasing effective capacity on the routes.

4.1. Regression framework

77. Having gathered strong descriptive evidence that there exists no relationship between consortia presence and the recent freight rate hikes, it might be useful to go beyond correlative evidence when attempting to establish causal relationships. To do this, we employ a regression analysis in which we explain the output parameter of interest as a function of consortia presence and other exogenous factors. These factors have been discussed extensively in Section 3.
78. We estimate the effect of consortia on freight rates by means of regression framework.²⁰ In general terms, the regression framework would look as follows:

$$\text{Freight rates}_{tx} = \beta_1 * \text{costs}_{tx} + \beta_2 * \text{demand}_{tx} + \beta_3 * \text{supply}_{tx} + \beta_4 * \text{consortia presence}_{tx} + \beta_5 * \text{market concentration}_{tx} + \dots + \epsilon$$

4.2. Data scope and included variables

79. We consider data from the largest seven trade routes²¹ covering both the main European East-West²² and North-South²³ trade routes in the period from January 2017 to September 2022. We estimate the effect of consortia presence on freight rates controlling for a variety of different cost, supply, and demand factors. The following provides an overview of the variables used:
- **Freight rates.** These correspond to the ‘all-in rate’ for 40ft containers based on Drewry data. We use the rate for 40-foot containers as these constitute the great majority of containers shipped, and price benchmarking focuses on these containers. The Drewry freight-rate data is available on a month-trade route level.
 - **Measures of consortia presence.** These are HHI Consortia Increment and the Consortia Capacity Share, as defined in section 3. We also control for the HHI Carriers which is the standard HHI accounting for the firm-specific capacity shares. These variables are defined per route and month.

20 Namely a linear, Ordinary Least Squares (OLS) regression.

21 Namely Asia-North Europe, Asia-Med, North Europe-North America, Med-North America, Europe-East Coast South America, Europe-West Coast South America, and Europe-Oceania.

22 Asia-North Europe, Asia-Med, North Europe-North America, Med-North America and Europe-Oceania.

23 Europe-East Coast South America, and Europe-West Coast South America.

- **Bunker costs.** These are the Rotterdam 380cSt Bunker costs. Bunker data is available on a monthly level.
- **Capacity absorption share.** The capacity absorption captures the effects of supply frictions, e.g. from the COVID pandemic which is causing port disruptions and delays. Sea Intelligence provides the capacity absorption share on a month and trade-route level.²⁴
- **Effective utilisation rate (2 months lag).** We make use of the capacity absorption share to calculate the effective capacity. The effective utilisation rate is then calculated dividing monthly TEU volumes by effective capacity. We use a 2-month lag of this variable considering that today's utilisation rates are likely to drive future freight rate variations. This has also been confirmed by our descriptive analysis set out in section 3.5. Moreover, introducing a lag allows us to mitigate issues related to reverse causality.²⁵ A higher utilisation is expected to lead to higher prices.
- **New COVID cases per million inhabitants.** We use the number of new COVID cases per million inhabitants as a proxy for lockdown intensity and a variety of other government interventions that negatively impact the ordinary course of business in the shipping industry. We thus expect a positive effect of COVID intensity on freight rates. Data on the number of COVID cases is available on a monthly level.
- **Global container shipping throughput index (2 months lag).** The *Global container shipping throughput index* is an index of total shipped volumes globally. We also use a two-month lag consistently with the utilisation rate variable. A higher throughput is indicative of higher demand and can thus be expected to lead to higher freight rates.
- **Global e-commerce sales.** The global (annual) e-commerce sales are another proxy for shipping demand. Many of the goods bought and sold online are shipped across the globe. We would therefore expect that a rise in e-commerce sales causes a rise in demand for shipping. In turn, this would lead to higher shipping rates.
- **Volume shipped on the route (2 months lag).** The total shipped volumes on a shipping route in a given month. We use shipped volumes as a proxy for overall demand and expect higher levels of volumes shipped to lead to higher prices. Monthly volume data on a trade route level was obtained from CTS.

We further control for so-called route "fixed effects" which are used in regression models to control for route-specific characteristics (for example, a route that would tend to be more expensive than another one on average because it is costlier to operate).

4.3. Consortia effect on freight rates

80. In this section we present the results of the econometric assessment. As discussed in section 3, consortia presence is not a straightforward measure to define. We thus consider two alternative specifications capturing the degree to which consortia are 'present' on a certain trade route over time. Our primary specification measures consortia concentration

²⁴ Data is not provided for the Europe-Oceania route.

²⁵ While current utilisation may affect prices and vice versa, the same reverse causality does not exist for lagged utilisation, meaning the current utilisation cannot be affected by future prices.

by virtue of the HHI Consortia Increment. We then add a supplemental assessment based on the Consortia Capacity Share.

81. We find that neither of the two measures are associated with a statistically positive and significant effect on freight rates across a variety of different model specifications. The results in this section thus confirm the findings derived from our descriptive assessment of the data: consortia presence appears to be unrelated to the recent freight rate development. If anything, we find that an increase in consortia presence (either measured by concentration or Consortia Capacity Share) may in certain specifications lead to lower freight rates.

4.3.1. Primary model: HHI Consortia Increment

82. Table 3 presents the results of our econometric analysis using the HHI Consortia Increment as measure of consortia concentration.

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83. The two values displayed for each variable are the coefficient (i.e., the estimated effect / point estimate for the effect of the variable) and the p-value²⁶ of the point estimate. The coefficient indicates the effect of a one unit increase in a particular variable on the dependent variable, i.e. the freight rate. The p-value value displayed in brackets helps determine whether a point estimate is statistically significant or not. Statistical significance itself is indicated by the presence of stars, with one (*), two (**), or three (***) stars corresponding to low, medium and high levels of statistical significance (which correspond to p-values of less than 10%, 5%, and 1% respectively). A variable whose coefficient does not have any star is said to be statistically insignificant. This means that its estimated effect is statistically indistinguishable from zero. In other words, statistically, this variable is not found to have an influence on shipping rates in the model.

Results

84. Table 3 below presents the results for our main regression specifications. In each specification, we control for bunker costs and the effective utilisation rate as the main cost and supply factors, while varying the specific demand controls used.
- Specification (1) constitutes our baseline specification where we use the global container shipping throughput index as our main demand variable.
 - In Specifications (2) and (3) we additionally add the capacity absorption share (%) and COVID cases per million to capture the effect of supply disruptions caused by the pandemic.
 - In Specification (4) we simultaneously add both COVID disruptions related variables that were added sequentially before, controlling for our full set of potential drivers of supply disruptions.

²⁶ A p-value measures the probability of obtaining the observed results, assuming that the null hypothesis is true. In the case of our regression framework our null hypothesis is always that the variable in question has no effect on shipping rates, i.e., its coefficient is equal to zero. A P-value of 0.1 indicates that, under the null hypothesis, the chances of finding a coefficient of the same size or larger are 10%.

- Specifications (5) and (6) amend our baseline specification with respect to alternative demand variables. We first use the annual e-commerce sales volume and then in specification (6) the total (lagged) volume shipped on a trade route.

85. The point estimates for each specification are shown in the following Table.

Table 3. Regression: Freight rates – results with HHI Consortia Increment

Freight rate (\$)	(1)	(2)	(3)	(4)	(5)	(6)
HHI Consortia Increment	-0.36 (0.186)	0.078 (0.723)	-0.22 (0.360)	0.067 (0.751)	0.31 (0.134)	-0.88*** (0.001)
HHI Carriers	2.44*** (0.000)	1.34** (0.038)	2.73*** (0.000)	1.69** (0.013)	2.39*** (0.000)	2.51*** (0.000)
Bunker costs	9.21*** (0.003)	5.86*** (0.010)	6.82*** (0.008)	5.77** (0.010)	9.13*** (0.000)	12.0*** (0.000)
Effective utilisation rate on route (2 months lag)	3761.9*** (0.002)	-752.2 (0.655)	1770.1*** (0.053)	-482.7 (0.640)	1720.1* (0.054)	6949.0*** (0.000)
Global container shipping throughput index (2 months lag)	135.9*** (0.000)	91.5*** (0.000)	108.4*** (0.001)	90.1*** (0.001)		
Capacity absorption (%) due to delays		316.4*** (0.000)		235.6*** (0.001)		
New Covid cases			5.20*** (0.001)	2.22* (0.071)		
Global annual ecommerce sales					1.75*** (0.000)	
Volume (2 months lag)						0.00088 (0.798)
Constant	-22066.1*** (0.000)	-9830.1*** (0.003)	-17374.0*** (0.000)	-10251.8*** (0.002)	-12619.3*** (0.000)	-9966.2*** (0.001)
Route fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Adj. R-Square	0.52	0.63	0.61	0.64	0.71	0.45
No. obs.	583	572	583	572	583	583

Source: CRA econometric analysis. Note: P-Values in brackets: *** P<0.01, ** p<0.05, *p<0.1. Europe-Oceania route is excluded from the analysis as the capacity absorption share (based on Sea-Intelligence) is unavailable for this route.

86. The following provides an interpretation of the results:

- **Consortia presence.** Across the first five specifications we see that the variable of interest, the HHI Consortia Increment, is not statistically significant. This means that a higher consortia concentration on trade routes is unrelated to freight rate developments. If anything, we see according to specification (6) consortia concentration has a significant *negative* effect on freight rates, meaning that higher consortia concentration leads to lower freight rates. The coefficient in specification (6) can be interpreted as follows: If the HHI increment from consortia increases by 100, then the freight rate decreases by 100 x the estimated coefficient of 0.88, meaning \$88.

- **HHI Carriers.** For the HHI accruing to individual carriers (ignoring consortia) we estimate a positive, significant effect on freight rates. This suggests that higher market concentration would lead to higher freight rates on average, which, all else equal, can be expected from economic theory.
 - **Bunker costs.** As expected, we see that bunker costs are positive and statistically significant across all specifications. We estimate that a one unit increase in the bunker cost index leads to an increase in shipping rates of between \$5.8 and \$12.0. This confirms the descriptive relationship we have established in section 3.2.
 - **Effective utilisation.** Our point estimate for the effective utilisation rate is positive and significant in our baseline specification (1) as well as specifications (3), (5), and (6). The result confirms expectations that an increase in the effective utilisation rates leads to higher freight rates. It is worth noting that utilisation rates become non statistically significant whenever the capacity absorption share is included in the model (in specifications (2) and (4)) suggesting that this is the main factor affecting prices and that, in these models, a large proportion of the utilisation rate effect is already captured by demand and supply variables that are included separately.
 - The two variables used to measure the COVID induced supply chain frictions, **capacity absorption (%)** due to delays and **new COVID cases**, are both of the expected sign and statistically significant. However, once they are both combined, the COVID cases variable is no longer statistically significant. This is most likely because a large proportion of the COVID induced disruptions are already captured by the capacity absorption variable. Overall, these results suggest that a large part of the recent price increases can be attributed to supply-chain disruptions related to the COVID pandemic.
 - **Global container shipping throughput index.** The estimate for our main demand variable, the container shipping throughput index, is positive and highly statistically significant throughout. The same applies for e-commerce sales, our alternative demand variable used in specification (6), while the effect we estimate for volume is not statistically significant. The latter is not very surprising given the problems of using shipped volumes as a proxy of demand discussed in section 3.3 but also considering that we already control for utilisation rates in the specification which will also capture part of the role played by demand.
87. In sum, the estimation results in our primary model confirm the findings from our descriptive analysis above: higher consortia presence on routes does not lead to higher freight rates – and if anything, may have a negative effect. More, estimation results for the various cost, supply and demand variables confirm expectations from economic theory, are statistically significant and economically meaningful. Thus, our primary model appears to be correctly specified and inferences can be made with a good degree of confidence.

4.3.2. Supplemental model: Consortia Capacity Share

88. Our supplemental specification uses the Consortia Capacity Share instead of the HHI Consortia Increment to capture consortia market presence. Using this alternative measure, we confirm the main results from our primary model: we do not find any evidence that a higher Consortia Capacity Share on a certain trade route relates to higher freight rates on that route. Thus, the main result in this section appears to be robust across different measures for consortia presence.

Table 4. Regression results: Freight rates – Consortia Capacity Share (%)

Freight rate (\$)	(1)	(2)	(3)	(4)	(5)	(6)
Consortia Capacity Share (%)	-34.3** (0.050)	-1.33 (0.921)	-33.0* (0.061)	-5.63 (0.692)	0.55 (0.972)	-52.0*** (0.002)
Bunker costs	8.96*** (0.003)	5.68** (0.010)	6.57*** (0.009)	5.55** (0.011)	8.81*** (0.000)	11.7*** (0.000)
Effective utilisation rate on route (2 months lag)	4092.4*** (0.001)	-592.3 (0.564)	2255.6** (0.013)	-336.3 (0.747)	2280.7** (0.011)	7065.0*** (0.000)
Global container shipping throughput index (2 months lag)	131.8*** (0.000)	88.2*** (0.000)	104.0*** (0.001)	86.3*** (0.001)		
Capacity absorption (%) due to delays		322.6*** (0.000)		256.4*** (0.000)		
New Covid cases			5.05*** (0.001)	1.84 (0.104)		
Global annual ecommerce sales					1.71*** (0.000)	
Volume (2 months lag)						0.00085 (0.812)
Constant	-15967.0*** (0.002)	-7524.5** (0.026)	-10834.5** (0.019)	-7002.8** (0.045)	-9175.7*** (0.000)	-3361.4 (0.363)
Route fixed effects	Yes	Yes	Yes	Yes	Yes	Yes
Adj. R-Square	0.51	0.63	0.59	0.63	0.70	0.45
No. obs.	583	572	583	572	583	583

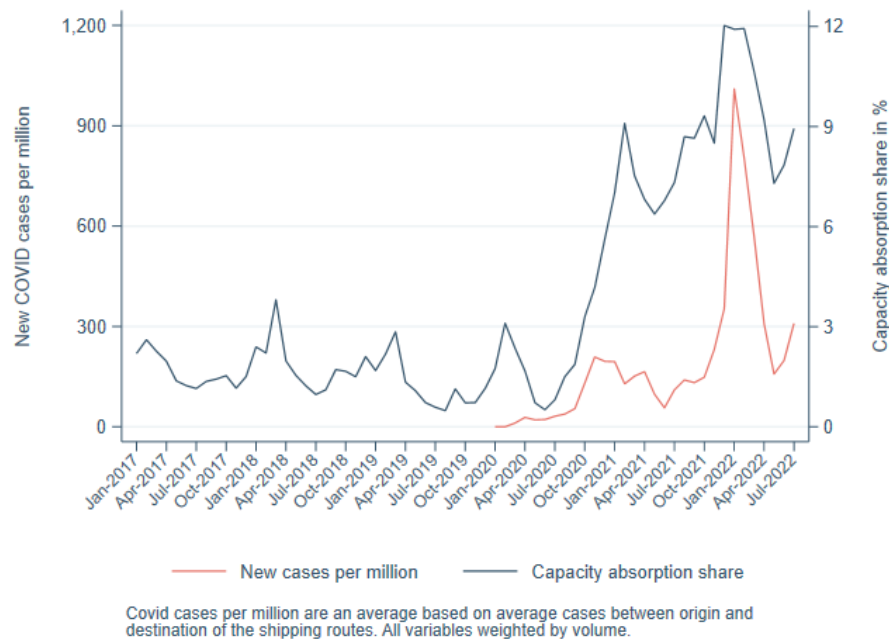
Source: CRA econometric analysis. Note: P-Values in brackets: *** P<0.01, ** p<0.05, *p<0.1. Europe-Oceania route is excluded from the analysis as the capacity absorption share (based on Sea-Intelligence) is unavailable for this route.

89. Across the first five specifications, we see that our measure for consortia market presence, the Consortia Capacity Share, is not statistically significant. This means that a higher share of capacity attributable to consortia is unrelated to freight rate developments. If anything, what we see in specification (6) is that consortia market presence has a significant *negative* effect on freight rates, meaning that higher Consortia Capacity Share leads to lower freight rates.
90. The point estimates for our demand and supply variables are of the expected sign and have similar statistical significance levels as those discussed in the context of our primary model. We find that a one unit increase in the bunker cost index leads to an increase in shipping rates between \$5.6 and \$11.7. We also find that an increase in the effective utilisation rates leads to higher freight rates. The capacity absorption (%) due to delays and new COVID cases also confirm our earlier findings that the COVID induced supply frictions play a significant role in recent freight developments. Finally, the global container shipping throughput index and global e-commerce sales again confirm the role played by demand in the development of freight rates.
91. We conclude that the estimation results in the supplemental model confirm the findings from our primary model as well as our descriptive analysis above: consortia presence (measured in terms of Consortia Capacity Share) does not lead to higher freight rates.

4.4. Consortia effect on capacity

92. We have shown that a key driver behind the price increase next to demand shifts appears to be a reduction in effective capacity. In this section we test whether the capacity disruptions themselves could be caused by consortia concentration. Our graphical analysis presented in the previous section already indicates that this is not supported by empirical evidence.
93. As with the analysis of freight rates, we also offer more formalised statistical tests to supplement our graphical analysis. However, we note that contrary to the price models, it is unlikely that our dataset covers all the main underlying factors that have led to the recent surge in lost capacity. We are thus primarily testing if the surge in capacity absorption is related to consortia presence, rather than aiming to fully explain the surge itself.
94. As a starting point, we note that the recent surge in lost capacity appears to be mainly driven by pandemic related frictions. Figure 15 highlights the apparent relationship between the number of COVID cases and the capacity absorption share. While we most likely lack certain variables to fully explain the observed spike in lost capacity, it thus seems appropriate to at least include the number of COVID cases in our econometric analysis of the recent capacity absorption increases.

Figure 15: Comparison of Covid cases and the capacity absorption share



95. In addition to the potential effect of consortia presence and the COVID pandemic, it may also be possible that the increase in demand for shipping during the pandemic exacerbated the existing congestions and supply chain frictions. We thus also consider this variable in our econometric analysis.
96. In sum, we specify a “simple” econometric model including variables covering these three areas:
- **Consortia presence.** As measures of consortia presence, we employ the same HHI Consortia Increment and the Consortia Capacity Share variables as previously defined.

- **The Covid pandemic.** In order to assess the impact of the COVID pandemic on port congestions and delay, we include the number of new covid cases in our model.
 - **Demand variables.** We include our main demand variable which is the Global container shipping throughput index. Results are robust to the use of alternative variables such as global ecommerce sales and route-specific volumes shipped.²⁷
97. Table 5 below presents the regression results when estimating the effect of consortia concentration on the capacity absorption share due to delays. We find no evidence for the notion that consortia concentration has caused supply frictions by increasing the capacity absorption. In none of the specifications we find a statistically significant, positive point estimate of our measure of consortia concentration. In certain specifications (see Specifications 3 and 4) we even find some evidence to suggest that consortia actually helped reduce the overall level of lost capacity.
98. In addition, we find that indeed external factors instead seemed to have caused a reduction in effective capacity by increasing capacity absorption due to delays. Our measure for COVID intensity (new COVID cases) has a positive and significant effect on capacity absorption throughout. In addition to this, in particular the demand shift represented by the global container shipping index appears to have aggravated the supply frictions, leading to more delays and increasing the capacity absorption share. All these effects are consistent with what can be expected from economic theory.

Table 5. Regression results on capacity absorption

Capacity absorption (%) due to delays	(1)	(2)	(3)	(4)
HHI Consortia Increment	-0.000011 (0.974)	0.00039 (0.299)		
Consortia Capacity Share (%)			-0.093*** (0.004)	-0.083*** (0.005)
New Covid cases	0.016*** (0.000)	0.014*** (0.000)	0.016*** (0.000)	0.014*** (0.000)
Global container shipping throughput index (2 months lag)		0.014*** (0.000)		0.13*** (0.001)
Constant	1.82** (0.018)	-14.9*** (0.004)	11.0*** (0.001)	-4.72 (0.331)
Route fixed effects	Yes	Yes	Yes	Yes
Adj. R-Square	0.63	0.67	0.65	0.68
No. obs.	595	575	595	575

Source: CRA econometric analysis. Note: P-Values in brackets: *** P<0.01, ** p<0.05, *p<0.1. Europe-Oceania route is excluded from the analysis as the capacity absorption share (based on Sea-Intelligence) is unavailable for this route.

99. Results are robust to varying the measure of consortia presence. For both Consortia Capacity Share as well as HHI Consortia Increment we find that consortia presence did not cause a decrease in effective capacity by increasing congestions and delays.
100. This provides further evidence that recent freight rate increases are not linked to consortia.

²⁷ These results are not reported here for brevity.