

Shipowners press for divergence from EU on antitrust rules

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OLIVER TELLING AND SUZI RING

Global shipowners are pressing the UK to diverge from the EU and protect them from competition laws, after the bloc delivered the industry a major blow by axing its exemption from antitrust rules.



The World Shipping Council, which represents the largest container shipping groups, has urged the UK to act as a “sovereign nation” after Brexit and retain the immunity from competition rules that some shipowners enjoy under British law.

Its appeal to the UK’s competition regulator, in a letter seen by the Financial Times, underlines shipowners’ despair after the EU ruled last month that its own exemption for the industry was no longer “fit for its purpose”, following years of increased profits and consolidation.

The bloc’s decision to scrap from April next year the so-called Consortia Block Exemption Regulation, which has enabled shipping lines to cut costs by sharing vessels, has piled unwelcome pressure on container carriers. Their earnings have plunged as a result of declining trade amid the global economic downturn. In a joint letter, WSC and the Asian Shipowners’ Association told the Competition and Markets Authority that the EU’s findings were “deeply flawed” and “unsound”.

Since leaving the EU, the UK has retained the bloc’s exemption from antitrust rules for shipping consortiums with a market share below 30 per cent. But this is set to expire in April and the CMA plans to make a recommendation to the government on whether or not it should be renewed.

Announcing the decision last month, EU competition commissioner Didier Reynders said “significant structural changes” in shipping had resulted in “new market conditions [that] became apparent during the coronavirus pandemic”.

Most global container trade is controlled by nine shipping lines that have grown through acquisitions of smaller rivals and formed three vessel-sharing alliances.

During Covid-19 lockdowns, an online shopping boom combined with logjams at ports caused demand to outstrip supply, driving up the cost of shipping and delivering record profits to these groups.

But WSC and ASA said it was “incoherent and irrational” for the EU to use the pandemic to justify its decision. “It is well established that the increased freight rates and service deterioration witnessed during the pandemic were the temporary result of extraordinary market forces,” they wrote.

The WSC and ASA added that consortiums were “indispensable to the fight against climate change” as they cut emissions by boosting operational efficiency. The deals also enabled smaller shipping lines to compete with larger rivals, they said.

Industry insiders hope a favourable decision in the UK would have an outsized influence globally. Most legal disputes in shipping are resolved in London, and English law underpins a big share of the industry’s commercial agreements globally.

Marjorie Holmes, shipping and competition lawyer at law firm Reed Smith, said the UK’s decision could influence other maritime hubs such as Singapore and Hong Kong, which have similar exemptions for shipowners.

Although the EU’s ruling does not outlaw co-operation between shipping groups, WSC warned that it had created considerable uncertainty for shipping lines, which must now assess whether their agreements comply with antitrust regulations. WSC said: “As a sovereign nation, the UK has the opportunity to continue the CBER . . . maintaining regulatory certainty instead of increasing bureaucracy.”

The CMA, which before the EU’s ruling had proposed to replace the CBER with an updated version, said it was still carrying out its review.