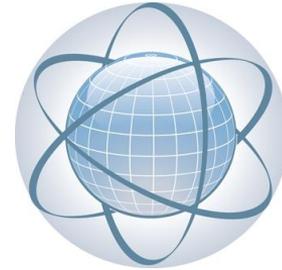


The Consortia Block Exemption review



global
shippers'
forum

James Hookham, Director & Secretary General

EMLO 24th Annual Conference, 26 October 2018, London

"We thought we had a deal?"



- Block Exemption = Denial of common rights to a 'normally' competitive commercial market
- Protections deemed necessary to permit competitor co-operation to maximise efficiency, provided:
 - Market share thresholds not breached, and
 - Resulting economies of scale were sufficiently large and shared with 'customers'
- Consortia BER tolerated as transition to post-Conference market, not the 'new normal'

"But we have ended up with this ..."



- Carriers still losing money
- Still ordering more capacity than needed
- Pricing discipline collapsed
- Alliances formed but M&A activity increasing
- Vertical integration now emerging
- Shippers unhappy with service quality
- Surcharges exceeding contract rates
- No mechanisms to negotiate new environmental costs
- Ports overwhelmed and under investment pressure
- Inland haulage overwhelmed by short notice diversions

"Why should we have to justify a return to normality"



- European Commission questionnaires issued
- Demands market evidence and legal insight to answer
- Renewal being decided on cause, not effects
- Presumption of normality should apply
- Renewal of BER should require convincing (overwhelming?) case by beneficiaries
- Continued entitlement to Block Exemption is evidence of market failure not an automatic right for participants

Shippers' Questionnaire



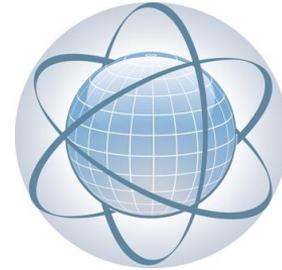
1. Why should shippers (consumers) have to spend time and money gathering evidence and legal argument to demonstrate the BER is delivering sub-optimal outcomes?
2. How can we demonstrate sub-optimal performance when we have no recent experience of normality?
3. In what other competition cases have consumers been required to demonstrate loss to competition authorities?

“Regulate by exception not by Exemption”



- Block Exemption is a safe haven for market structures and questionable practices of the past
- New market structure now apparent: Big 5 + everyone else
- DG Comp should
 - Presume against renewal unless evidence of need demonstrated
 - Demand explanations for new capacity orders, given market signals
 - Set a timetable for the transition to market normality
 - Take confidence from co-operation arrangements in other modes and sectors where no Block Exemption is required

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