1. About the UK Chamber of Shipping

1.1. The UK Chamber of Shipping (UK Chamber) is the trade association and voice of the UK shipping industry. With a growing membership of 180 member companies throughout the UK, made up of shipowners, professional organisations and service companies, it seeks to raise awareness of shipping, create an understanding of it and ensure that member companies’ commercial objectives are at the heart of the government process.

1.2. The UK Chamber is submitting this response due to the importance of competition policy in shipping markets (especially in the liner shipping market) and of the various fiscal incentives provided to the shipping industry in the UK. With the exception of subsidies for lifeline ferry services and support of seafarer training payments, the UK Government provides no direct financial support to shipping companies. However, the shipping-specific features of various tax regimes fall within the definition of state aid, which is governed within competition law. UK Government policy has been to promote and support the shipping industry in the UK, to enable UK shipping companies to compete in a global market, and to encourage inward investment into the UK to facilitate ship operations in the UK. Growing the shipping industry in the UK helps to provide more capacity to train and recruit British seafarers to work at sea, and later on, in on-shore professional roles – both of which are demonstrably beneficial to the UK economy. This growth has in turn enabled the UK to continue being a business centre for the global maritime sector.

1.3. Consequently, the UK Chamber would advocate the need for stability post-Brexit to ensure business continuity.

1.4. Comment is limited to shipping-specific arrangements, rather than those which affect companies generally; not all the questions within the inquiry are relevant to the shipping industry.

2. Antitrust

2.1. Post-Brexit, to what extent should the UK seek to maintain consistency with the EU on the interpretation of antitrust law? What opportunities might greater freedom in antitrust enforcement afford the UK?

2.1.1. Shipping companies based in maritime hubs such as London, Shanghai, Oslo, Hamburg, New York, Singapore, Amsterdam, Dubai, etc compete for global business on a free market basis. Different ships carry different types of cargo; so for example, a ship can be designed to carry one type of cargo in bulk, or be designed to carry specialist cargo (such as car carriers, or refrigerated goods, etc) or be designed to carry lots of different cargo from different customers in one ship fixed to a regular schedule (liner ships).

1 E.g the impact of tonnage tax detailed in Chapter 6 of The economic contribution of the UK shipping industry: a report for Maritime UK, August 2017
2.1.2 Liner shipping markets operate differently from other shipping markets because of the cargo they carry and the services offered to customers (shippers). Liner ships transport lots of smaller quantities of cargo (more often than not in containers) so one liner ship will often have lots of goods from different shippers. This in turn means that liner ships operate on a regular and fixed schedule to cater to many different shippers. The complexity and high cost of this type of operation, combined with the lack of regulatory barriers to ships entering this market and the availability of generous government subsidies in some Asian countries, have meant that the industry has suffered from overcapacity for structural, cyclical and seasonal reasons - but such excess capacity cannot be used or easily taken away.

2.1.3 Historically, to overcome these problems large scale agreements had been made amongst liner shipping companies operating on the same trade routes to offer standard freight rates and regulate capacity. The ability to fix freight rates has been outlawed by the EU, and now these rates are set on a competitive basis. However, the EU recognises that managing capacity remains problematic. Larger container ships enable the operating costs of transporting containers to be reduced, the benefits of which can be passed to shippers, consumers and lead to a reduction in emissions - but only if the use of such expanded capacity is maximised.

2.1.4 Consequently, the EU continues to permit liner shipping to enter into cooperation agreements to provide transport goods on trade routes where their combined market share is less than 30%. This permission is contained in the EU maritime consortia block exemption regulation\(^2\) ("BER"), which provides an automatic exemption from Article 101(1) Treaty on the Functioning of the European Union (TFEU) by stating that such agreements which comply with the BER are automatically justified under Article 101(3). Such cooperation agreements are called “consortia”, and allow liner shipping carriers to work together, without price-fixing, to supply joint services through various technical, operational or commercial arrangements (such as using the same vessels, port installations, etc.)

2.1.5 On 24 June 2014 the European Commission extended the BER for an additional five years (April 2020) for liner shipping consortia. The Commission concluded that the exemption worked well by continuing to provide legal certainty to agreements which achieve rationalise activities to achieve economies of scale - the impact of which was considered beneficial to customers and did not unduly distort competition. The Commission also noted that market circumstances warranted the extension.

2.1.6 Liner shipping is a global business, and so the way it is regulated in the UK on this aspect must be compatible with approaches taken by other countries. Countries outside of the EU also have block exemptions for liner shipping agreements, such as those which apply in Singapore, Japan and Hong Kong; they are either similar or more liberal than the EU Commission approach.

\(^2\) 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)
2.1.7 The UK Chamber therefore would request that post-Brexit, at the very minimum, the UK’s approach is no more restrictive than that taken by the EU Commission. Post April 2020, it will be important for the UK as a minimum again to extend the content of the BER – though if the UK is not bound by EU rules it is free to take a more liberal approach.

3. State Aid

3.1. Are state aid provisions likely to form an essential component of any future trade agreement between the UK and EU? Do any existing trade agreements between the EU and third countries provide a useful precedent for future UK-EU state aid arrangements?

3.1.1 The UK, the vast majority EU member states, along with the European Commission have agreed to abide by the *OECD Council Recommendation Concerning Common Principles of Shipping Policy for Member Countries* ("Common Principles of Shipping Policy"). This Council Recommendation complements the commitments OECD member countries have already entered into under the *OECD Code of Liberalisation of Current Invisible Operations*. These two instruments commit the OECD Member Countries to not impose restrictions for ships from foreign countries that trade internationally; so for example, a ship registered with Country C should be able to enter Port A in Country A and transit to Port B in Country B. Ships that transit from a port in EU Member State A to a port in EU Member State B are considered to be engaged in international trade for this purpose.

3.1.2 Within the OECD Code of Liberalisation of Current Invisible Operations, reservations have been made by some EU Member State Countries on cabotage trade (ships trading within ports located in the same country). These reservations typically indicate that, if that EU Member State has a cabotage regime, only ships flagged with it or with other EU Member States can trade between ports in that EU Member State. The EU regulates EU member state cabotage regimes by stipulating that only ships not flagged with EU member countries can be excluded from cabotage trades.

3.1.3 The EU has embraced the OECD principle of free trade of international shipping services, not only just between EU member states, but also between EU member states and third countries. The EU has committed itself to progressively abolish existing restrictions and prevent the introduction of new restrictions. Therefore, there should be no change for ships trading internationally, regardless of where they are registered or where ownership is based.

3.1.4 Consequently, neither the UK nor the EU can make access to their international shipping markets conditional upon compliance with their respective state aid rules. It is conceivable that, depending on the nature of the UK's access to the single market and/or free trade deal, the EU may make the buying/selling of goods or preferential access conditional on the acceptance of EU state aid rules in the UK – but this is outside the scope of our specific response.
3.2 Will the UK require a domestic state aid authority after Brexit?

3.2.1 Individual state aids are tools to give effect to government policy, and more often than not such policy is carried out by more than one government department. UK tonnage tax can be taken as an example. Tonnage tax is the responsibility of HM Treasury, and administered by HMRC. However, the purpose of tonnage tax is to support the broader shipping policy aims of the UK Government, which is the responsibility of the Department for Transport (DfT); that broader policy being to enable UK shipping companies to compete globally, and to encourage foreign shipping companies to invest and establish themselves in the UK. The training elements of tonnage tax are also administered by the DfT, rather than HMRC.

3.2.2 Other state aid provisions which are cross-departmental include Seafarer Earnings’ Deduction – which involves tax, transport and employment policy – and Support for Maritime Training (SMarT) – which although is mainly administered by DfT, involves education, employment and training policy. In relation to lifeline ferry services, this is dealt with regionally within the UK so that local policy decisions are made to support transport links to geographically remote areas.

3.2.3 As state aid provision often involves more than one government department, the UK Chamber has no view how this should be delivered, so long as government departments continue to work together. If there is to be one or more organisations involved with this, it should be made clear where the responsibility lies, so that any oversight and enforcement issues can be challenged through appropriate procedures at first instance. So for example, if there were to be a dispute on the state aid aspects of how lifeline ferry services are awarded, there should be a fair and transparent process for affected businesses to raise grievances before court proceedings are considered.

3.3 What would be the opportunities and challenges for state aid or subsidy controls in the UK if no trade agreement were to be reached with the EU? Would WTO antisubsidy rules restrict the UK’s ability to support industries, or individual companies, through favourable tax arrangements?

3.3.1 In short, the UK Chamber does not see any impact on state aid or subsidy controls for UK operators if no trade agreement were to be reached – as long as those controls have been allocated to the appropriate government department/ regulator. The UK Chamber is also of the view that the WTO anti subsidy rules are unlikely to restrict the UK Government’s ability to support the shipping industry to compete in global markets, grow the UK maritime cluster, support seafarer training and preserve lifeline ferry services.

3.3.2 The UK, like other EU countries, has various fiscal and other incentives for the shipping industry, most of which are governed by the 2004 Community guidelines on state aid to maritime transport (‘2004 guidelines’). The 2004 guidelines provide criteria for the compatibility of state aid to maritime transport with the EU internal market, under Article 107(3)(c) and Article 106(2) of the TFEU. These 2004 guidelines replaced previous versions issued in 1997 and beyond, and exist to give Member States and companies guidance about what is acceptable state aid to further the “Community maritime interest” – i.e. the interest of the shipping sectors and maritime clusters of all the EU Member States. On the condition that...
the UK leaves the single market, it follows that the UK no longer needs treat the “Community maritime interest” as a priority when considering its state aid provision. The UK can compete for business like other international maritime hubs do, such as Singapore, Dubai, Hong Kong and Shanghai.

3.3.4 The UK Government was closely involved with the formulation of the guidelines on state aid to maritime transport, and these consequently accommodate the various mechanisms necessary to give effect to UK shipping policy. The UK legislation which implements the various state aid measures outlined in the 2004 guidelines is not contingent on the 2004 guidelines directly.

3.3.5 Accordingly, the UK Government could modify its domestic legislation in some areas. For example, it could remove the EU flagging requirements imposed in the 2004 guidelines, because the objective of increasing EU-Member State flagged vessels would no longer be relevant to the UK. The UK Chamber considers that there are opportunities to tailor state aid to support the shipping industry in a more advantageous manner to the UK economy than currently presented in the 2004 guidelines. These opportunities are described through examples offered in other non-EU international maritime hubs in the UK Chamber’s response to 3.4.

3.4 How will the Government’s industrial strategy shape its approach to state aid after Brexit? To what extent has the European Commission’s state aid policy limited interventions that the UK Government may have otherwise pursued?

3.4.1 To ensure stability for shipping companies during this period of uncertainty, it is imperative that as part of the UK Government’s industrial strategy, the state aid incentives already in place for shipping are maintained. The incentives that are likely to constitute state aid within the meaning of EU competition law are as follows:

a) Tonnage tax;
b) Capital allowances/roll-over relief for ships as a business asset;
c) Publically funded shipping services, such as various lifeline ferry routes in Scotland;
d) Training aid – Support for Maritime Training (SMarT): The SMarT scheme supports courses approved by the Maritime and Coastguard Agency (MCA) and the Merchant Navy Training Board (MNTB) for the training of officers, officer cadets and ratings. It covers up to 50% of actual training costs and is paid to the training providers (shipping companies) who sponsor the trainees;
e) Seafarer Earnings’ Deduction. Seafarers are entitled to an income tax deduction of 100% with respect to their earnings aboard if their work has kept them out of the UK for a defined minimum period of time.

3.4.2 EU state aid policy has prevented the UK from designing a sufficiently attractive tonnage tax regime for third party ship management companies to set up and grow in the UK, and such a regime would complement the tonnage regime in place for ship owners/operators. Third party ship management companies also

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3 Such as the restrictions on towage activities, dredgers and the restriction on entering additional non-EU flagged vessels to a country’s tonnage tax regime if the EU-flagged tonnage tax fleet of the all the EU Member States has not on average stayed the same or increased.
contribute significantly to the operation and management of ships in the UK, which in turn encourage the training of British seafarers and the provision of on-shore technical jobs for those seafarers when they come ashore.

3.4.3. In 2017, the Danish government contended that its tonnage tax regime should be extended to offshore mobile drilling rigs. However, the EU Commission had already expressed its view that tonnage tax should not be extended to such vessels. This restriction puts EU Member States in a competitive disadvantage to jurisdictions such as Singapore; in 2007, Singapore extended its tonnage taxation scheme to include mobile drilling rigs and drilling vessels.

3.4.4. The UK Government could consider more innovative tax measures in the same way as other jurisdictions, such as Singapore and Hong Kong, are free to apply. In Singapore, Dubai, Hong Kong, Shanghai and Vancouver, support is provided to develop high value-added professional service jobs around the core shipping operations in order to improve the maritime cluster and its competitiveness as a whole. In Singapore there is the Maritime Cluster Fund for Manpower Development (MCF-MD) and in Hong Kong there is the Maritime and Aviation Training Fund (MATF). In Vancouver, non-resident shipping companies operating in Vancouver with Canadian management will not be subject to Canadian tax on their income from international shipping activities, even if they manage a global business from their Canadian office.

3.4.5. Other examples of state aid provisions which are different to that used by EU Member States include Hong Kong’s Annual Tonnage Charge Reduction Scheme, and Singapore’s Green Ship rebate.4

3.4.6. Another aspect which could be considered by the UK Government is to allow vessels engaged in the construction, maintenance, repair and dismantling of offshore wind farms outside territorial waters eligible for UK tonnage tax. The Norwegian government has passed its domestic legislation to facilitate this, because it will assist those vessels which had previously serviced the oil and gas sector, and that sector is currently experiencing a prolonged downturn. The Norwegian government has written to the European Free Trade Association (EFTA) to consider this expansion of Norway’s tonnage tax regime.

3.4.7 Financial support for lifeline ferry services to island communities is not a function of the UK Government’s industrial strategy. Nor has the European Commission’s state aid policy inhibited the ability of the UK Government (or devolved administrations) to support such services. The practical impact of the EU state aid policy has fallen on the manner in which such support is provided, in particular by requiring that contracts to operate such services must be put out for competitive tender and awarded on the basis of a transparent and objective assessment of bids received in response to that public invitation.

4 For a more detailed analysis see EU Shipping Competitiveness Study: International benchmark analysis - Study commissioned by the European Community Shipowners’ Associations, February 2017 (Deloitte)
3.5 What, if any role, might the devolved institutions play in UK state aid control post-Brexit? Are there any potential implications for the UK internal market?

3.5.1 The UK Chamber would expect that devolved administrations will continue to administer particular state aid schemes within their competence and geographical jurisdiction – so that, for example, the Scottish Government will continue to award, manage and fund contracts for the provision of lifeline ferry services to Scottish islands.

3.5.2 More generally, Merchant Shipping and corporate taxation are constitutionally reserved matters, and the UK Chamber would expect that state aid schemes deriving from them (such as financial support for seafarer training or tonnage tax) will continue to be administered accordingly on a UK-wide basis.

3.5.3 In any event, the UK Chamber would expect that all state aid schemes will be administered with the same high standards of transparency, objectivity, and certainty wherever the administration may take place.

3.6 Will it be necessary for the UK and EU to agree a transitional arrangement for state aid matters after the UK’s withdrawal from the EU? If so, what transitional issues would such an arrangement need to address?

3.6.1 While the UK shipping industry will need its concerns addressed in a transitional arrangement; it is not obvious whether the fiscal regimes and support for shipping as described in this response will also need to be addressed, if domestic legislation remains as it is during the transitional period. The various existing tax regimes and support available to the shipping industry in the UK are based on long-term commitments – such as training seafarers or staying in tonnage for a minimum of 10 years. Consequently, it is vital that these regimes and aids remain undisturbed throughout the transitional period. Beyond any transitional arrangement, the UK Chamber also considers it critical that the various existing tax regimes and support available to the shipping industry in the UK remain available to ensure business continuity.

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