

International Chamber of Shipping

38 St Mary Axe London EC3A 8BH

Tel +44 20 7090 1460

Fax +44 20 7090 1484

info@ics-shipping.org www.ics-shipping.org www.shipping-facts.com



23 March 2016

BE/0004: HONG KONG COMPETITION COMMISSION: APPLICATION FOR A BLOCK EXEMPTION ORDER UNDER SECTION 15 OF THE COMPETITION ORDINANCE IN RELATION TO CERTAIN LINER SHIPPING AGREEMENTS

COMMENTS BY THE INTERNATIONAL CHAMBER OF SHIPPING

The International Chamber of Shipping (ICS) is the principal international trade association for shipowners, representing all sectors and trades, including containership operators. The membership of ICS comprises national shipowners' associations from 37 countries, including the Hong Kong Shipowners' Association. The Asian Shipowners' Forum is a regional partner of ICS, with many ASF national shipowners' associations also being members of ICS. Collectively, ICS represents over 80% of the world's merchant shipping tonnage.

ICS is grateful for the opportunity to comment, from an international perspective, on the application of the Hong Kong Liner Shipping Association (HKLSA) application for a block exemption for liner shipping agreements under the new Hong Kong Competition Ordinance. ICS fully supports the HKLSA application.

Competition exemptions for liner shipping are the international norm

The various maritime competition rules that apply globally (and particularly those within the Asia Pacific region) are currently in broad alignment. Worldwide, most governments have recognised that appropriate anti-trust exemptions for liner shipping bring with them economic benefits to all stakeholders, including enabling shipping companies to satisfying shippers' (and consumers') demands more effectively in terms of frequency, reliability, efficiency, quality and price.

Following the European Union's (EU) decision to prohibit liner conferences in 2008 there has not (contrary to the expectations of the European Commission) been a wider shift towards the repeal of anti-trust immunities. Moreover, as discussed below, governments and independent economists that have studied the issue have noted that trade conditions in the EU have worsened considerably since the EU's decision, including greater volatility in rates, reductions in service, and increased market concentration as compared to trades in which immunity has been retained.

In November 2015 the Competition Commission of Singapore (CCS) formally recommended that its existing block exemption order for liner shipping agreements be extended for another five years to 31 December 2020. The recommendation came after extensive CCS consultation with stakeholders earlier in 2015. In announcing its recommendation CCS

noted that 'antitrust exemptions for liner shipping agreements generally remain the regulatory norm worldwide'.

As well as Singapore, ICS encourages Hong Kong to take full account of exemptions for liner shipping incorporated into the current competition regimes in the United States, China, Canada, Japan, Malaysia, South Korea and Chinese Taipei.

In deciding to retain broad immunity for carrier agreements, Singapore also considered the size of its economy and the fact that transshipment cargo makes up a very large proportion of Singapore container volumes. Singapore and Hong Kong have similarly sized economies and, like Singapore, a very large proportion of Hong Kong's container cargo throughput involves transshipment cargo, which is highly discretionary. Thus, a block exemption in Hong Kong would result in a greater degree of connectivity leading to broader benefits to the Hong Kong economy.

In 2011, the Asian Pacific Economic Cooperation (APEC) Transportation Working Group adopted Guidelines on liner shipping non-ratemaking agreements. The APEC Guidelines affirmed that "the special character of shipping as an international activity creates a need for the co-ordination and harmonisation of shipping policies." It also recognised that global trade is dependent on scheduled liner shipping services that offer the widest possible geographical coverage at the highest level of efficiency and that "exemptions and exceptions from a competition driven regulatory framework may be necessary and these will be implemented in a way that minimises economic distortions, giving consideration to those principles." The Guidelines state that 'non-ratemaking agreements between ocean carriers may continue to be permitted as a positive form of supplier collaboration for efficiency-enhancement within APEC member economies' competition regulations'. While VDAs were not the primary focus of this study, on the subject of VDAs, APEC noted that "[n]one of the APEC economies contacted during this study appears to have any immediate intention of following in the footsteps of the European Union [which eliminated its exemption for conferences]."

The notion that freight rates would drop as a result of the repeal of block exemptions for liner shipping has been challenged by a 2012 U.S. Federal Maritime Commission (FMC) study. The study, which was aimed at determining the impact of the EU's 2008 conference prohibition, concluded that the repeal of the block exemption has not resulted in any relative decline in EU freight rates compared with Far East/US trades. It also observed that there appears to have been a comparative increase in rate volatility in EU/US trades since the introduction of the prohibition. (The study can be downloaded at www.fmc.gov/assets/1/Documents/FMC_EU_Study.pdf.)

The benefits of co-operative liner shipping agreements

The economic benefits, to all stakeholders, of co-operative agreements among liner shipping companies are well known. Vessel Sharing Agreements (VSAs) and Voluntary Discussion Agreements (VDAs) provide liner shipping companies with the market stability necessary to commit to the long term investments required for the operation of high-value ships and logistics infrastructure in scheduled services. In doing so, they allow shipping companies to cope better with the severe and sudden imbalances in trade flows that are a feature of global shipping markets, including intense seasonal fluctuations.

The result is expanded shipping services that are better equipped to meet the needs of shippers and consumers, and higher levels of investment to meet growing levels of demand in the future. Co-operative arrangements also facilitate improved decision-making on the part of shipping companies by permitting the sharing of trade data and market trends.

The sharing of cargo capacity through VSAs enables shipping lines to make more efficient use of cargo space and resources. Because liner shipping operates according to strict schedules, a vessel must sail according to its allotted departure time, whether full or empty. 'Slot sharing' helps to ensure that space is utilised, which allows carriers to reduce operating costs and offer lower freight rates, to the benefit of shippers and consumers.

In allowing carriers to utilise cargo space much more efficiently, the continued existence of anti-trust exemptions is also beneficial to the shipping industry's efforts to improve its environmental performance, including efforts to deliver reductions in its carbon dioxide emissions. The impact of improvements to the operational efficiency of a ship will be moderated if the cargo capacity of that vessel is not fully utilised.

Competition is not impeded by liner shipping agreements

VSAs and VDAs do not prohibit competition between individual shipping companies. On the contrary, such co-operative mechanisms allow the entry into container shipping markets of smaller companies that would not otherwise be able to establish themselves as independent scheduled services. Smaller carriers are able to use their limited cargo capacity to form part of a service and are given improved access to trade data and market trends, thereby improving their ability to compete.

Co-operative arrangements do not involve the setting or negotiation of carriers' rates with customers. Companies engaging in VSAs and VDAs remain autonomous in all respects and enter into confidential service agreements with customers. Participating lines must therefore compete robustly in terms of price and the quality of service that they provide.

There is no evidence that VSAs or VDAs enable their members to set or maintain rates at higher levels.

Finally, ICS believes that it is important for the Hong Kong Competition Commission to consider its decision on the application for a block exemption in a global context. In addition to the impact it would have on the port of Hong Kong (as has been elaborated on by HKLSA in its application) a rejection of the block exemption application by the HKCC – thereby going against the current international norm – could also have negative implications for the liner shipping industry globally.

We hope these remarks are helpful.

Simon Bennett
Director Policy & External Relations
Simon.Bennett@ics-shipping.org