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

Representations on Case No. MyCC/700/4/2/3(2)
Malaysia Competition Commission (MyCC)
Level 15, Menara SSM @Sentral
7 Jalan Stesen Sentral 5
Kuala Lumpur Sentral
50623 Kuala Lumpur, Malaysia

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REPRESENTATIONS ON CASE NO. MyCC/700/4/2/3(2)

PROPOSED BLOCK EXEMPTION FOR VESSEL SHARING AGREEMENTS AND VOLUNTARY DISCUSSION AGREEMENTS IN RESPECT OF LINER SHIPPING SERVICES

COMMENTS BY THE INTERNATIONAL CHAMBER OF SHIPPING (ICS)

1. 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. The Asian Shipowners' Association is a regional partner of ICS, with many ASA national shipowners' associations also being members of ICS. Collectively, ICS represents over 80% of the world's merchant shipping tonnage.

2. ICS is grateful for the opportunity to comment, from an international perspective, on the Malaysia Competition Commission's (MyCC) proposal to extend the block exemption for Vessel Sharing Agreements (VSAs) and Voluntary Discussion Agreements (VDAs) in respect of liner shipping services.

3. In general ICS welcomes the proposal, originally requested by the Malaysia Shipowners' Association (MASA) and Shipping Association Malaysia (SAM), and wish to make some suggestions for the MyCC's consideration.

4. In this context, for continued stability, the industry (as represented by ICS) believes that a longer-term exemption (e.g. 5 years) would be more appropriate than the two years initially proposed. Hopefully this can be the subject of further consideration. A five-year exemption is consistent with the

terms of other international exemptions for liner shipping agreements, such as those which apply to Singapore and Japan.

The benefits of VSAs and VDAs

5. Much like airline code-sharing agreements, as operational agreements between carriers, VSAs allow for discussion and agreement on technical and operational arrangements regarding the provision of liner shipping services, such as coordination or joint operation of vessel services and exchange or charter of vessel space. Outlined below are some of the benefits derived from VSAs:

    - Increased quality of service (connectivity and frequency);
    - Cost efficiencies;
    - Decreased costs of entry and expansion;
    - Increased efficiencies in utilising port capacity; and
    - Environmental benefits.

6. VSAs, therefore, help to ensure that customers receive more service options and greater carrier choice in ocean transport services.

7. On the other hand, as commercial agreements between carriers, VDAs allow carriers to exchange and review market data and trade flows, supply/demand forecasts and business trends, to better inform business decisions. ICS welcomes the fact that the current Block Exemption Order (BEO) and renewal proposal generally permits the exchange of industry and market data among carriers operating within VDAs. However, neither the current BEO nor the proposal for VDAs allows for any voluntary agreements on commercial issues.

8. Through VDAs, in other countries, discussions may take place for agreement on development of recommended voluntary guidelines for rates, charges, service contract or tariff terms and other similar commercial issues. The purpose of such discussions is to promote stable rate levels, avoid prolonged depressed rates, encourage service and investment, and preserve competition in the trade. Thus, ICS requests the MyCC reconsider SAM and MASA's request to include this additional VDA authority in the proposed BEO renewal, which would be consistent with Malaysia's major trading partners.

9. It is important to note that carriers may or may not follow the VDA's guidelines, and that contracts with shippers are negotiated and agreed by individual carriers and not the VDA. Below are some of the benefits derived from VDAs:

    - Rate stability;
    - Service stability; and
    - Rate and surcharge transparency.

10. By enabling better planning and budgeting of long-term shipping costs, the efficiencies currently derived from VDAs would continue to benefit customers and the Malaysian economy as a whole.

11. In line with the findings by MyCC, ICS strongly believes that VSAs and VDAs complement one another and are vital for the industry to continue to thrive globally, as well as in the Malaysian trades specifically. As a result, both types of discussions are indispensable to achieving the above mentioned efficiencies and to allow carriers to provide regular, fixed day sailing schedules at rates that are not subject to constant fluctuation.

12. Moreover, it is evident that the liner shipping industry remains highly competitive (despite these agreements) as co-operation is limited, which provides the incentive needed for carriers to compete with each other, even in cases where they are party to the same liner agreements. Consequently, ICS fully aligns itself with the factual findings of MyCC, which conclude that:

    - There is a “need for regularity in meeting shippers’ demand at ports”;
    - There is a “latent demand for such regularity and frequency of services by small shippers;
    - The liner industry is beset by high fixed costs and numerous operational costs;
    - There is “unbalanced demand on various trade routes”; and
    - “External trade of Malaysia has an important containerised shipping component.”

Competition exemptions for liner shipping are the international norm

13. 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 satisfy shippers’ (and consumers’) demands more effectively in terms of frequency, reliability, efficiency, quality and price.

14. As an example, following a comprehensive consultation with all stakeholders, the Competition Commission of Singapore (CCS) recently recommended that its existing BEO for liner shipping agreements be extended for another five years to 31 December 2020. In announcing its recommendation CCS also noted that ‘antitrust exemptions for liner shipping agreements generally remain the regulatory norm worldwide’.

15. ICS therefore recommends that full account should be taken of similar exemptions granted in the United States, China, Canada, Republic of Korea, and most recently as renewed in Japan (June 2016).

16. In deciding to retain broad immunity for carrier agreements, Singapore also considered the size of its economy and the fact that transhipment cargo

makes up a very large proportion of its container volumes. The fast pace of increase in trade in the region of the Association of Southeast Asian Nations (ASEAN) – 9.2% growth rate between 1993 to 2013 – means a growing volume of containers being transported through the region.

17. As a country member of ASEAN, Malaysia has benefitted from this through enhancement of its international trade performance, as highlighted by an average growth rate of 9.6% between 1993 and 2013, and by a remarkable increase of container trade (900,000 TEUs in 1990 compared to 20.8 million TEUs in 2013). ICS believes that allowing carriers to be part of VSAs and VDAs has without doubt contributed to this significant growth, therefore, if the proposed block exemption is granted, it is most likely going to result in broader benefits for the Malaysian economy.

18. During this current period of great economic uncertainty, we commend MyCC for taking into consideration the importance of Malaysia's status as a key transshipment hub in Asia, because a refusal to extend the exemption for VSAs and VDAs could lead to considerable damage to that status. We also welcome the findings that during the first three years of the initial MyCC exemption, no complaints of alleged anti-competitive practices in relation to the BEO have been received.

Closing remarks

19. It is clear that VSAs and VDAs do not inhibit competition between individual shipping companies. On the contrary, such co-operative mechanisms allow smaller companies – that would not otherwise be able to establish themselves as independent scheduled services – entry into container shipping markets. 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.

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

21. Finally, ICS believes it is important for MyCC to take full account of the global context before reaching a decision on the proposed block exemption, noting that by granting an extension to the exemption Malaysia would continue to be fully aligned with the current international norm. To do otherwise would likely have negative implications for the Malaysian economy and the liner shipping industry globally.

ICS sincerely hopes the above remarks will assist MyCC in its deliberations and that the proposed extension will be granted. We also wish to once again express our appreciation for the opportunity to submit comments on behalf of ICS.

Yours faithfully,

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