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Submitted via email: applications@compcomm.hk
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Dear Ms Leung,

CASE BE/0004: COMMENCEMENT OF INITIAL CONSULTATION ON THE REVIEW OF THE COMPETITION (BLOCK EXEMPTION FOR VESSEL SHARING AGREEMENTS) ORDER 2017

Submission by the International Chamber of Shipping (ICS)

STATEMENT OF INTEREST

The International Chamber of Shipping (ICS) is the global trade association for shipowners and operators, representing all sectors and trades, including containership operators. Collectively, ICS represents over 80% of the world's merchant shipping tonnage.

The membership of ICS comprises national shipowners' associations from 38 countries/territories, including the Hong Kong Shipowners Association (HKSOA), while the Asian Shipowners' Association (ASA) is a regional partner of ICS. This submission is therefore made on behalf of the ICS global network of member national associations and their member companies, in response to the ongoing public consultation by the Hong Kong Competition Commission on the 'Review of the Competition Order 2017 (Block Exemption For Vessel Sharing Agreement)' of 5 August 2021.

SUMMARY OF MAJOR POINTS

The ICS comments provided below are in support of an extension to the BEO and are intended to be complementary to separate submissions being made by the Hong Kong Shipowners Association (HKSOA), the World Shipping Council (WSC), the Hong Kong Liner Shipping Association (HKLSA) and the Asian Shipowners' Association (ASA).

Vessel Sharing Agreements (VSAs) allow shipping lines to use Hong Kong as a strategic port for operational efficiencies; transhipment across multiple service providers; boosting service options and flexibility for both local importers and exporters using multiple shipping lines. The flexibility they provide, in the use of liner company assets (within alliances), also increases the efficiently in utilisation of available vessels, containers, space and equipment. This is crucial for the success of Hong Kong as a transhipment hub.

The BEO is therefore an indispensable legal tool which allows the efficiency of liner shipping companies to be maximised, providing immense benefit to the Hong Kong local economy. As noted in the original Statement of Reasons document published by HKCC, in permitting VSAs between liner companies, the BEO allows for discussion and cooperation between competitors on sharing vessel capacity and/or co-ordination of services offered. ICS notes that the benefits derived from this co-ordination include:

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

The enhancements to the efficiency of service arising from VSAs are passed on to shipping company customers –shippers moving their goods in international trade– in Hong Kong and beyond, through a global maritime transport network that caters to the demands of international trade. By having one or more shipping companies among which space on board ships is shared, more carriers can offer scheduled services to more ports than those carriers could offer individually. The consolidated cargo volumes also allow carriers to deploy bigger, more efficient vessels, which the carriers could not deploy if they all were operating individually. It is also noteworthy that whilst VSAs allow for increased operational efficiency, the information sharing they facilitate does not result in the negotiating with customers on, or collective setting of, carrier rates and therefore may not give rise to any concerns related to anti-competition practices.

ICS VIEWS AND RESPONSES TO SELECTED CONSULTATION QUESTIONS

Section 1: Market Developments

ICS views on the impact of the COVID-19 pandemic on the shipping industry

The COVID-19 pandemic has had an unprecedented impact on the shipping industry, with unparalleled levels of port congestion, container shortages and changes in consumer demand leading to uncertainty among shipowners and operators, particularly for liner companies.

In this regard, VSAs have been crucial in providing the legal certainty and stability required by shipping companies to allow them to respond to this exceptional level of operational challenge. In co-ordinating their response, VSA partners were able to deploy all available vessel tonnage and shift capacity to high-demand trades, which allowed them to cope better with the severe and sudden imbalances in trade flows precipitated by COVID-19.

Despite the uncertainty brought about by the pandemic, the fundamental structure of the industry remains largely unconcentrated, underpinned by intense competition among shipping companies, whether they share space on their ships or not.

ICS views on VSA developments since the Issuance of the Order

We note that, positively, since the issuance of the BEO in Hong Kong, competition authorities in Malaysia (see MyCC, 2019) and the European Union and (see European Commission, 2020) have approved the renewal of their respective BEOs, while the Competition and Consumer Commission of Singapore has provisionally recommended an extension to their corresponding BEO (see CCCS, 2021). In addition, the Australia Competition and Consumer Commission is currently conducting a review of their BEO legislation with a view to potential renewal (see ACCC, 2020).

All of these regulatory authorities invariably cite the improvement of productivity, efficiency and quality of available shipping services and the net economic benefits identified from VSAs as justification for the renewal of their corresponding BEOs. This emphasises the recognition by these countries of the strategic importance of VSAs, which allow shipping companies to increase and enhance the services they provide, while maximising efficiency by sharing vessels in a way that fulfils a net economic benefit. These arguments also hold true for the economy of Hong Kong.

Section 3: Effectiveness of the Order

ICS views on whether the Order continues to be merited and effective

The Block Exemption Order (BEO) does indeed continue to be both effective and merited, as it provides the essential legal certainty and predictable regulatory environment required to enable liner shipping companies to make long term investment plans and safeguard the efficiency of maritime transport services. It is therefore essential that as much regulatory clarity as possible is maintained by the renewal of the Order, in such unprecedented and uncertain times, as a result of the COVID-19 pandemic.

Given their widespread use by liner companies, VSAs form an integral part of the industry’s considerations for long-term investment, and this global regulatory consistency helps maintain the connectivity of Hong Kong, by eliminating barriers that distort competition on services and prices. These investments, in turn, have a positive impact on the Hong Kong economy, which relies heavily on the efficiency of maritime transport services (like many other economies).

CLOSING REMARKS

The Hong Kong Block Exemption Order continues to provide liner companies with the regulatory stability and certainty required to respond to the unprecedented challenge posed by the COVID-19 pandemic. It remains a vital and well-functioning component of the global maritime logistics chain, permitting VSAs to better facilitate the flow of global trade, through increased service options and reliability.

As such, an extension to the BEO, of at least five years, would provide legal certainty for liner shipping companies and reemphasise Hong Kong’s enduring commitment to the sustainability of world trade, while continuing to foster competition, cost reductions and maximising the efficiency of shipping services.

ICS sincerely hopes that the remarks above, submitted on behalf of our global membership, will assist the Competition Commission of Hong Kong in its deliberations.

Yours sincerely,

Simon Bennett

Simon Bennett
Deputy Secretary General
International Chamber of Shipping