International Chamber of Shipping
Shaping the Future of Shipping

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Competition Commission
19/F, South Island Place,
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Wong Chuk Hang, Hong Kong
Attn: Representations on Case BE/0004

ICS Submission in response to Hong Kong Competition Commission public consultation on the second review of the Block Exemption Order for Vessel Sharing Agreements between liner shipping companies – Reference No: BE/0004

The International Chamber of Shipping (ICS) is the principal global trade association for shipowners and operators, representing over 80% of the world merchant fleet across all sectors and trades, including container shipping lines. ICS membership comprises national shipowners' associations and other associations from 43 countries and territories, including the Hong Kong Shipowners Association and the China Shipowners' Association, as well as others in the Asia-Pacific region where the Hong Kong SAR plays a vital role as a regional and global maritime transport hub. Many ICS members are also members of the Asian Shipowners' Association (ASA) with whom ICS is fully aligned on competition law issues.

This submission is made in response to the Hong Kong Competition Commission (HKCC) public consultation on the second review of the Block Exemption Order (BEO) for Vessel Sharing Agreements (VSAs) between liner shipping companies, pursuant to the Competition (Block Exemption for Vessel Sharing Agreements) Order 2017.

Effectiveness of the Order, competition concerns and efficiencies

ICS strongly supports the renewal of the BEO on the basis that VSAs in the Hong Kong SAR continue to provide economic efficiencies and consumer benefits, and the BEO plays a critical role in promoting healthy competition, and efficient and sustainable liner shipping operations.

At the time of the previous BEO renewal, the liner shipping industry was significantly affected by the Covid-19 pandemic. Since then, the industry has broadly recovered, however, considerable trade uncertainty remains due to global price inflation, new and increased trade tariffs, and issues relating to crucial international waterways such as the Panama and Suez Canals. VSAs have greatly helped carriers respond to these unprecedented challenges, by enabling more efficient use of capacity, and helping carriers respond to trade disruptions to meet the needs of importers and exporters in the Hong Kong SAR and around the world.

Since the previous review of the BEO, although some shipping alliances have restructured, there have not been any changes to the basic structure or operations of VSAs, nor to their benefits, and there are no competition concerns. The legal certainty which the BEO provides is essential in facilitating efficiency-enhancing co-operation within the liner shipping industry, as well as setting an example to other jurisdictions.

In the context of the Hong Kong SAR, the liner shipping industry remains crucial to the Hong Kong SAR's economy and the Government's plans as a part the Chinese Greater Bay Area. In summary, VSAs:

- Support the Hong Kong SAR's strategic objective of being a competitive maritime hub;
- Strengthen the Hong Kong SAR's position in regional and global supply chains;
- Facilitate service coverage to a wider range of ports and destinations; and
- Reduce emissions and environmental impacts through more efficient vessel deployment, which is crucial to delivering on the Government's sustainability goals including making the Hong Kong SAR a green maritime centre, as declared in the Chief Executive's 2024 Policy Address.

ICS emphasises that VSAs do not involve the joint setting of freight rates or customer allocation and, thus, do not present anticompetitive risks under normal scrutiny. They only involve operational co-operation, and they enhance competition by:

- Maintaining competition between carriers in terms of network coverage, efficiency, service frequency and reliability;
- Lowering barriers to entry;
- Generating efficiencies and benefits that are ultimately passed on to customers;
- Facilitating the entry of smaller players; and
- Improving service frequency and reliability.

ICS asserts that these benefits outweigh any hypothetical risks to competition and are fully consistent with the regulations set by the Hong Kong Competition Ordinance (Cap 619). Further, the above mentioned benefits directly address the 'desirability of maintaining a stable and predictable regulatory environment in relation to competition for liner shipping' as set out by Article 19(3a) of the Ordinance.

Regulatory developments in other jurisdictions

The legal certainty provided by VSAs ensures the stability and flexibility of the global supply chain, as all actors need assurance of the stable function of relevant regulatory frameworks. Therefore, it is important that the regulatory process in the Hong Kong SAR is based on regional and global norms.

The norm under most jurisdictions remains firm in allowing VSA exemptions for liner shipping. Therefore, not renewing the BEO would place the Hong Kong SAR at a competitive disadvantage to other maritime hubs, particularly rival shipping hubs within Asia such as Singapore (which recently renewed its equivalent block exemption order in October 2024 for a further five-year period), as well as Mainland China, Chinese Taipei, Japan, Malaysia, and the Republic of Korea.

While the European Union (EU) and the United Kingdom (UK) have recently decided not to renew their equivalents of the BEO, ICS suggests that the situation in the Hong Kong SAR is not comparable to these jurisdictions for the following reasons:

- Market conditions in Asia are more dynamic and fragmented, with a much larger number of smaller players. It is also more common for carriers to co-operate outside the global alliances, which cover multiple trade routes and have partnership agreements involving multiple carriers on a global scale, whereas VSAs typically target a specific trade lane. Smaller VSAs help small to medium sized carriers compete with larger carriers by gaining access to broader networks without increasing their own fleets, which make VSAs more important in Asia than in Europe for maintaining competitiveness and efficiency.

- Competition law in the EU and UK is well established, whereas the competition law regime in the Hong Kong SAR and other Asian jurisdictions was introduced relatively recently. The EC Directorate-General for Competition (DG COMP) and the UK Competition and Markets Authority (CMA) continue to emphasise that VSAs are pro-competitive and efficiency enhancing. The expiry of the Consortia Block Exemption Regulations (CBER) in the EU and UK does not mean that co-operation between shipping lines is unlawful under their respective antitrust rules. The EU and UK have allowed their CBERs to expire due to the availability of alternative exemptions as well as significant guidance available for carriers to self-assess their continuing lawfulness.

- If the BEO was not renewed by the Hong Kong SAR, there would not be any alternative exemptions or significant guidance available to carriers, therefore withdrawing the BEO in the Hong Kong SAR would create considerable legal uncertainty.

In view of the above, it would be more beneficial for the Hong Kong SAR to renew its BEO and stay aligned with its regional partners and competitive peers, to ensure that liner shipping throughout the region can evolve under similar conditions.

ICS therefore encourages HKCC to maintain alignment with international norms, so as to remain attractive to global liner networks by renewing its BEO.

Market share limit

As no other jurisdiction currently imposes a market share cap as part of the application of liner shipping exemptions, and in view of the highly competitive nature of the liner shipping sector serving the Hong Kong SAR, ICS also recommends the removal of the market share cap in the Hong Kong SAR's BEO to ensure that Hong Kong is positioned on a level playing field with neighbouring ports such as Singapore.

Extension period

ICS notes that the HKCC conducted a similar public consultation and review of the same BEO in 2021. The question arises as to whether it is necessary to conduct these consultations so frequently for a well-functioning Order. Many other jurisdictions do not conduct these reviews as frequently, and many do not set a fixed term on their VSA exemptions. For example, Mainland China, Chinese Taipei, Australia, New Zealand, Japan, Republic of Korea, Canada and the United States all have VSA exemptions in the form of a statutory exemption. Therefore, ICS encourages the HKCC to consider taking a similar approach to ensure an efficient use of resources. Alternatively, ICS encourages the HKCC to consider extending the BEO for a longer period.

Conclusion and Recommendations

Given the significant benefits which VSAs offer to the efficiency of the maritime sector and the Hong Kong SAR's economic and sustainability agenda, ICS recommends that:

- If a fixed term is maintained, then the current BEO should be **renewed for a minimum of five (5) years**, with continuity in its scope and terms;

- HKCC continues to engage with international regulatory bodies as well as key trading partners and competitors for port services in Asia, to maintain regional and global consistency; and

- Consideration be given to the Hong Kong SAR's broader economic and environmental goals in the review process.

ICS remains committed to supporting the Hong Kong SAR's current position as a regional maritime leader, with aspirations for even more growth, and would be pleased to engage further with HKCC on this matter.

Yours faithfully,

Thomas A Kazakos

Secretary General