

## Annex

### **PROPOSED RECOMMENDATION FOR THE BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS**

#### **Background**

1. Section 34 of the Competition Act prohibits anti-competitive agreements.<sup>1</sup> However the Minister can make an order under section 36 of the Competition Act, following the recommendation of CCCS, to exempt certain categories of agreements from section 34. This is known as a “block exemption”. A block exemption is granted on the basis that a category of agreements fulfils the net economic benefit criteria set out in section 41 of the Competition Act; namely, that the agreements that come within that category contribute to:
  - a. improving production or distribution, or
  - b. promoting technical or economic progress, and
    - i. do not impose on the undertakings<sup>2</sup> concerned restrictions which are not indispensable to the attainment of such objectives, and
    - ii. do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.
2. At present, the only block exemption in Singapore is the BEO, which pertains to liner shipping agreements (“**LSAs**”). LSAs are agreements between two or more vessel-operating carriers which provide liner shipping services<sup>3</sup> (“**liners**”), i.e. the transport of goods on a regular basis between ports and in accordance with timetables and sailing dates advertised in advance. The BEO was first introduced in 2006 and subsequently extended in 2010, 2015 and 2020. The current BEO expires on 31 December 2021.<sup>4</sup>

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<sup>1</sup> Section 34 of the Competition Act prohibits agreements, decisions of an association of undertakings and concerted practices that have the object or effect of preventing, restricting or distorting competition in Singapore.

<sup>2</sup> An undertaking means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

<sup>3</sup> Vessel-operating carriers which provide liner shipping services include main lines and feeders.

<sup>4</sup> On 28 August 2020, the Minister extended the BEO in its current form for one year until 31 December 2021, in view of the highly uncertain times brought about by the COVID-19 pandemic. As the prevalence and importance of liner shipping agreements may evolve in the new normal that emerges from the pandemic, it is necessary to account for such developments in assessing the appropriate approach for Singapore in the longer term.

3. The two broad categories of LSAs covered by the BEO are vessel sharing agreements<sup>5</sup> and price discussion agreements<sup>6</sup>. Under the current BEO, liners are permitted to engage in discussions and/or agreements relating to technical, operational or commercial arrangements, as well as price and remuneration terms, as long as the LSAs comply with the following conditions:<sup>7</sup>
  - a. allow members liners to have individual confidential service arrangements;
  - b. allow members liners to withdraw from the agreement upon giving an agreed period of notice without financial or other penalty;
  - c. do not require mandatory adherence to a tariff (as defined in the BEO); and
  - d. do not require the disclosure of confidential information concerning service arrangements.

### **Proposed recommendation with respect to the block exemption**

4. In assessing whether to recommend a block exemption order for LSAs, CCCS considered whether LSAs will generate net economic benefit, based on the criteria as set out in section 41 of the Competition Act. The assessment and proposed recommendation take into consideration survey returns and views from CCCS's feedback sessions with key industry stakeholders such as industry associations, industry players (e.g. liners, freight forwarders, importers/exporters) and public sector agencies. CCCS also considered recent market developments in the liner shipping industry and the international regulatory landscape with respect to LSAs.
5. CCCS is of the view that the following LSAs generate net economic benefits and proposes to recommend a BEO for 3 years from 1 January 2022 to 31 December 2024, in respect of:
  - a. Vessel sharing agreements for liner shipping services; and
  - b. Price discussion agreements for feeder services.
6. The following sections explain CCCS's proposed recommendation for the BEO.

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<sup>5</sup> Vessel sharing agreements are agreements between liners in which the parties to such agreements discuss and agree on operational arrangements relating to the provision of liner shipping services, including the coordination or joint operation of vessel services, and the exchange or charter of vessel space. Vessel sharing agreements include consortia, slot exchange agreements, slot charter agreements, joint service agreements, slot swap agreements and "alliances" or "strategic alliances".

<sup>6</sup> Price discussion agreements are agreements between liners in which parties to such agreements discuss certain commercial matters relating to shipping routes, including prices (or component of prices) and remuneration terms such as freight rates and surcharges charged to third parties (i.e. to customers such as shippers and freight forwarders).

<sup>7</sup> Paragraph 5(1) of the BEO.

**(i) Vessel sharing agreements for liner shipping services meet the net economic benefit criteria**

*Vessel sharing agreements improve production or distribution, or promote technical or economic progress*

7. Vessel sharing agreements improve the connectivity of Singapore's port. Given the size of the domestic economy, Singapore is not a major port of origin or destination unlike other major ports. Indeed, a very large proportion of Singapore's container cargo throughput involves transshipment. By facilitating the sharing of vessels among liners, vessel sharing agreements increase the utilisation of space on vessels, and allow liners to operate at a lower cost than if each liner were to operate on its own and to provide services using vessels operated by other liners. This also enables the provision of more frequent services in and out of Singapore across more trade routes. The connectivity and concentration of liner shipping services available in Singapore generates considerable benefits to Singapore, both directly and indirectly, including providing a higher degree of connectivity and service choice for Singapore's importers and exporters.
8. Vessel sharing agreements also enhance competition among liners. Through the use of such agreements, smaller liners can provide services on trade routes and at frequencies which they are otherwise not able to provide on their own due to lack of scale. Thus, such agreements enable smaller liners to compete with larger liners or another alliance of liners.
9. Consequently, vessel sharing agreements contribute to improving the production of liner shipping services in Singapore. In particular, they enable the connectivity of Singapore's container port with consequent broader benefits to the Singapore economy, and facilitate cost savings for the liners from resultant economies of scale.

*Vessel sharing agreements do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of economic benefits*

10. The BEO conditions (as elaborated at paragraph 2 above) ensure that restrictions under vessel sharing agreements are maintained at the narrowest necessary for attainment of the economic benefits and limit the extent of restrictions on competition. The BEO conditions require that vessel sharing agreements allow members to have individual confidential service arrangements and to withdraw from the agreement without penalty. In addition, the vessel sharing agreement cannot impose obligations on members to adhere to a tariff or disclose confidential information on service arrangements.
11. The potential restrictions on competition arising from vessel sharing agreements are necessary to achieve the efficiencies outlined above. The various aspects of vessel sharing agreements which may potentially be considered to restrict competition such as the exchange of slots, pooling of resources, the joint operation of a service and the exchange of information on capacity and other operational matters – are directly related to the operation of the vessel sharing agreements. The absence of such restrictions is expected to eliminate or greatly reduce the efficiencies that flow from the vessel sharing agreements.

12. Considering the above, vessel sharing agreements allowed under the BEO do not impose restrictions that are not indispensable to the attainment of economic benefits for Singapore

*Vessel sharing agreements do not eliminate competition in respect of a substantial part of the goods and services in question*

13. As noted above, for a vessel sharing agreement to be exempted under the BEO, it has to comply with conditions that facilitate individual private contracting for liners' own service arrangements with their customers (being shippers and freight forwarders). Based on the information that CCCS has obtained, individual private contracting is a common practice in the industry
14. In this regard, the BEO for vessel sharing agreements is unlikely to confer considerable market power on any liner(s) or eliminate competition in a substantial part of liner shipping services.

*Vessel sharing agreements for liner shipping services satisfy the criteria for block exemption*

15. CCCS has assessed that all the necessary conditions set out in the section 41 criteria for a block exemption for vessel sharing agreements for liner shipping services are satisfied.

**(ii) Price discussion agreements for feeder services meet the net economic benefit criteria**

*Price discussion agreements for feeder services improve production or distribution, or promote technical or economic progress*

16. CCCS understands that main lines, which provide liner shipping services across continents and regions, have largely withdrawn from price discussion agreements, and such agreements are no longer relevant to main lines. Consequently, main lines have indicated that they are not seeking an exemption for such agreements, and that there will be no impact on them whether the BEO for price discussion agreements is extended or not.
17. However, price discussion agreements remain relevant to feeders. Feeders provide liner shipping services to main line customers by providing space on the feeder's vessels for the containers (and cargos) of main lines, usually on regional trade routes between Singapore and ports where main lines do not serve (e.g. main lines operate larger vessels that may not be able to call at smaller ports). Feeders may engage in price discussions among themselves, such as discussing the recommended surcharges (e.g. fuel surcharge) charged to their main line customers, to improve their position in commercial negotiations with main line customers.
18. Feeders attract and anchor main lines to Singapore, thus expanding Singapore's shipping network. The network of liners and trade routes arising from the concentration of main lines and feeders available in Singapore generates considerable benefits to Singapore, both directly and indirectly, including providing a higher degree of connectivity and service choice for Singapore's importers and exporters.

19. In consideration of the above, price discussion agreements for feeder services on balance improve the production of liner shipping services and the distribution of goods in Singapore.

*Price discussion agreements for feeder services do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of economic benefits*

20. The BEO conditions ensure that restrictions under the price discussion agreements are maintained at the narrowest necessary for attainment of the economic benefits and limit the extent of restrictions on competition. The BEO conditions require that price discussion agreements for feeder services allow members to have individual confidential service arrangements with their customers and to withdraw from the agreement without penalty. In addition, the price discussion agreements for feeder services cannot impose obligations on members to adhere to the agreed or recommended prices or disclose confidential information on their service arrangements.
21. Considering the above, price discussion agreements for feeder services allowed under the BEO do not impose restrictions that are not indispensable to the attainment of economic benefits for Singapore.

*Price discussion agreements for feeder services do not eliminate competition in respect of a substantial part of the goods and services in question*

22. As noted above, for a price discussion agreement for feeder services to be exempted under the BEO, it has to comply with conditions that the agreement allows individual private contracting and cannot impose obligations on members to adhere to the agreed or recommended prices or disclose confidential information on service arrangements. Based on the information that CCCS has obtained, individual private contracting is a common practice in the industry. The rates that feeders will charge their main line customers, including surcharges, are subjected to bilateral negotiations between feeders and their main line customers. The anti-competitive effects from the use of such price discussion agreements for feeder services appear to be limited - main lines are generally not concerned with such discussions as surcharges imposed by feeders are still subject to negotiation with main lines who are likely to possess bargaining power.
23. In this regard, the BEO for price discussion agreements for feeder services is unlikely to confer considerable market power on any liner(s) or eliminate competition in a substantial part of feeder services.

*Price discussion agreements for feeder services satisfy the criteria for block exemption*

24. CCCS has assessed that all the necessary conditions set out in the section 41 criteria for a block exemption order for price discussion agreements for feeder services are satisfied.

**(iii) Extension of the proposed BEO for 3 years from 1 January 2022 to 31 December 2024**

25. The extension of the proposed BEO for 3 years ensures that the BEO continues to remain relevant and current to the liner shipping industry. It also allows CCCS to keep a close watch on developments in the shipping industry and international regulatory

developments. In this regard, CCCS notes that an extension of 3 years is comparable to block exemption orders for LSAs in other jurisdictions.

### **Consultation Questions**

26. CCCS is inviting comments on the proposed recommendation to the BEO in paragraph 5. The following questions highlight the key issues for which CCCS is seeking feedback. Respondents may wish to organise their submissions according to the issues highlighted below.

- a. What are your views on the proposal to extend the BEO in respect of vessel sharing agreements?
- b. What are your views on the proposal to extend the BEO in respect of price discussion agreements for feeder services?
- c. What are your views on the proposed period of extension of the BEO (i.e. an extension of 3 years until 31 December 2024)?
- d. What are your views on the appropriate definition of feeder services in the BEO?
- e. What are your views on the impact of the proposed recommendation on your business — would you say it has a positive, negative, or neutral impact? Why?
- f. Do you have any other comments on the proposed recommendation?

### **Public Consultation Feedback Form**

Please click [here](#) to access the link to the feedback form.