

Annex

CCCS'S RECOMMENDATION TO THE MINISTER FOR TRADE AND INDUSTRY ON THE BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS (2024)

28 October 2024

Background

1. Section 34 of the Competition Act 2004 (the "**Competition Act**") prohibits anti-competitive agreements (the "**section 34 prohibition**"). However, the Minister for Trade and Industry (the "**Min/T&I**") is empowered to make an order under section 36 of the Competition Act (known as a "**block exemption**"), upon the recommendation of the Competition and Consumer Commission of Singapore ("**CCCS**"), to exempt certain categories of agreements.
2. In law, CCCS can recommend to the Min/T&I that a block exemption be granted on the basis that it is likely that the category of agreements fulfils the net economic benefit ("**NEB**") criteria.¹ An agreement generates NEB if it produces significant economic benefits that outweigh its anti-competitive effects, and the restrictions on competition are necessary to achieve the economic benefits and do not substantially eliminate competition.
3. At present, the only block exemption in Singapore is the Competition (Block Exemption for Liner Shipping Agreements) Order (the "**LSA BEO**"), which was first put in place in 2006 and subsequently renewed in 2010, 2015, 2020 and 2021.² The current LSA BEO is in force until 31 December 2024.
4. The LSA BEO exempts the following types of liner shipping agreements ("**LSAs**")³ from the section 34 prohibition (subject to conditions):
 - a. Vessel sharing agreements ("**VSAs**") for liner shipping services; and
 - b. Price discussion agreements ("**PDA**s") for feeder services.
5. In the last review of the LSA BEO in 2021, CCCS assessed that VSAs for liner shipping services and PDAs for feeder services generate NEB for Singapore and

¹ Section 36(1) of the Competition Act.

² Prior to 2021, price discussion agreements for both main line and feeder services were exempted, and this was narrowed in 2021 to feeder services only. Vessel sharing agreements for both main liner and feeder services have been exempted since the LSA BEO was introduced in 2006.

³ Liner shipping agreements are agreements between two or more liner operators pursuant to which the parties agree to co-operate in the provision of liner shipping services in respect of one or more of the following: (a) technical, operational or commercial arrangements; (b) price; (c) remuneration terms.

recommended a renewal of the LSA BEO for three years.⁴ CCCS, however, recommended narrowing the scope of the then-LSA BEO by removing the exemption for PDAs for main line services, whilst retaining a narrower exemption for PDAs for feeder services.

Public Consultation

6. On 27 May 2024, CCCS commenced a public consultation on its proposed recommendation to the Deputy Prime Minister (“DPM”), in his capacity as Min/T&I, to renew the LSA BEO for five years from 1 January 2025 to 31 December 2029. CCCS assessed that the following LSAs generate NEB for Singapore and should be the subject of the LSA BEO:
 - a. VSAs for liner shipping services; and
 - b. PDAs for feeder services.
7. CCCS also sought feedback on the current and impending usage of LSAs which involve inland carriage of goods (e.g., truck or rail haulage) occurring as part of through transport. This was in view of feedback which CCCS had received from freight forwarders⁵ highlighting that it is unfair for liners to have competition law immunity with respect to inland carriage of goods, while freight forwarders do not.
8. At the close of the public consultation on 17 June 2024, CCCS received a total of five responses from the industry. Respondents include an industry association, main lines and a feeder. CCCS is grateful to all respondents for their feedback and comments.

Summary of CCCS’s NEB Assessment and Feedback from the Public Consultation

9. The following paragraphs summarise CCCS’s assessment of the NEB, the feedback received through the public consultation, and CCCS’s final recommendation.

Recommendation 1: VSAs for liner shipping services satisfy the criteria for block exemption

10. CCCS assessed that VSAs for liner shipping services improve the global connectivity of Singapore’s port and support Singapore’s status as a transshipment hub. VSAs also enhance competition among liners by lowering barriers to entry for smaller liners to provide services on trade routes and at frequencies that they would otherwise not be able to provide on their own due to lack of scale. Further, VSAs for liner shipping services bring about environmental

⁴ CCCS recommended a renewal of three years instead of the usual five years as Singapore was in the midst of the Covid-19 pandemic and a cautious approach was adopted to ensure that the policy could support the needs of the businesses as Singapore emerged from the pandemic. A renewal of three years would facilitate a timelier review of the LSA BEO to ensure that it remained relevant to the industry while balancing the need for sufficient legal certainty and lead time for investments.

⁵ Freight forwarders compete with liners, as the former also provide end-to-end supply chain solutions to their customers but they procure liner shipping services from liners.

benefits by enabling liners to share, utilise and deploy larger vessels that are more environmentally friendly.

11. The feedback from the public consultation is consistent with CCCS's assessment that VSAs for liner shipping services improve the production of liner shipping services in Singapore. All respondents expressed support for CCCS's proposed recommendation to renew the LSA BEO in respect of VSAs for liner shipping services. Liners noted that VSAs provide significant benefits to Singapore, including more frequent and reliable liner shipping services, greater connectivity, cost efficiencies and environmental benefits. Further, the industry association expressed that the renewal of the LSA BEO for VSAs provides legal certainty to support Singapore's decarbonisation goals and that liners, industry stakeholders and customers are likely to benefit from the LSA BEO in this respect.
12. In consideration of the above, CCCS is of the view that VSAs for liner shipping services satisfy the criteria for block exemption.

Recommendation 2: PDAs for feeder services satisfy the criteria for block exemption

13. CCCS assessed that PDAs for feeder services remain relevant for some feeders' businesses. Being able to participate in such PDAs attracts feeders to base their headquarters and operations in Singapore and to connect their services through Singapore. Feeders, in turn, attract and anchor main lines to Singapore, thus expanding Singapore's shipping network to support its transshipment hub. Anti-competitive effects from the use of such agreements appear to be limited. Firstly, surcharges imposed by feeders on main lines are still subject to commercial negotiation with main lines, which are likely to possess bargaining power. Secondly, main lines may be motivated to operate their own feeder services should the prices offered by (common) feeders be uncompetitive.
14. Respondents to the public consultation were either supportive of or neutral towards CCCS's proposed recommendation to renew the LSA BEO in relation to PDAs for feeder services.
15. The feedback is consistent with CCCS's assessment that PDAs for feeder services remain relevant for some feeders' businesses and that the LSA BEO for such PDAs attracts feeders to base their operations in Singapore and to connect their services through Singapore. CCCS is therefore of the view that PDAs for liner shipping services satisfy the criteria for block exemption.

Recommendation 3: Renewal of the LSA BEO for five years from 1 January 2025 to 31 December 2029

16. CCCS proposed that a duration of five years will provide the industry with greater legal certainty to support the industry during the major transitions in Singapore in the coming years (i.e., decarbonisation of the maritime sector and development of Tuas Port), while ensuring that the LSA BEO continues to remain relevant and current to the liner shipping industry. For liners, this provides continuity for them to carry on their commercial activities and creates a conducive

regulatory environment as they plan their long-term investments. For customers, this creates more stability in the network of liners which in turn offers more choices to support customers' needs.

17. Most respondents to the public consultation were supportive of a five-year renewal, with a few expressing a preference for a longer renewal of more than five years. On balance, CCCS is of the view that a duration of five years would adequately balance the needs for legal certainty and timely assessment of the LSA BEO in order to respond to any change in the industry. This would ensure that the LSA BEO remains relevant and current.

Recommendation 4: Update the scope of the LSA BEO to cover co-operation among liners in relation to the transport of goods between ports only to reflect the current industry practice

18. CCCS had received feedback from freight forwarders that some main lines have expanded their operations beyond sea transport to offer end-to-end supply chain solutions to their customers, such as inland transportation and warehousing. Freight forwarders compete with liners, as the former also provide end-to-end supply chain solutions to their customers but they procure liner shipping services from liners. Freight forwarders highlighted the possible unlevel playing field between the liners which have competition law immunity with respect to inland carriage, and the freight forwarders which do not.
19. Feedback from the public consultation indicated that there is no clear current or impending usage of LSAs involving the inland carriage of goods occurring as part of through transport:
 - a. An industry association acknowledged that "few, if any", VSAs operating globally or in Singapore include such co-operation. However, it indicated a preference not to amend the scope as the market could evolve and to evaluate this issue in the future.
 - b. While the three main lines did not indicate current or impending plans to enter into such LSAs, one suggested that the current scope may potentially be useful despite having no such LSAs in Singapore.
 - c. A feeder submitted that the scope is not relevant for feeders and indicated a preference for a level playing field (e.g., the exemption should focus on ocean-going services only).
20. Based on the feedback from freight forwarders and feedback from the public consultation, CCCS recommends updating the scope of the LSA BEO to cover co-operation among liners in relation to the transport of goods between ports (i.e., not including the inland carriage of goods). This is in view of the following considerations:
 - a. First, there is no clear evidence of current or impending usage of LSAs involving the inland carriage of goods. This suggests that the current scope of exemption is likely to be wider than necessary. To clarify, liners do not

need to depend on the LSA BEO if they wish to offer inland carriage of goods to their customers on their own (i.e., without cooperation with other liners).

- b. Second, the amendment will allow CCCS to review market developments and consider the appropriate regulatory measure that can facilitate co-operation on “inland carriage” and ensure a level playing field for all providers (including freight forwarders), should such co-operation become more prevalent in the future and bring about benefits to Singapore.
 - c. Third, should liners seek to co-operate on inland carriage of goods while CCCS is reviewing market developments, they have the option to notify their agreement to CCCS, if necessary, should they wish to obtain legal certainty.
21. To facilitate transition for the industry, CCCS proposes a transitional provision to be included in the LSA BEO. Any existing LSAs that cover co-operation among liners on inland carriage, which have been signed on or before 31 December 2024, will continue to benefit from the LSA BEO for one year (i.e., 1 January to 31 December 2025).

CCCS’s Recommendation to DPM in his Capacity as Min/T&I

22. In conclusion, CCCS has recommended to the DPM and Min/T&I to renew the LSA BEO for five years from 1 January 2025 to 31 December 2029 on the following basis:
- a. Retain the categories of liner shipping agreements which will benefit from the LSA BEO, namely:
 - i. VSAs for liner shipping services;
 - ii. PDAs for feeder services; and
 - b. Update the scope of the LSA BEO to cover co-operation among liners in relation to the transport of goods between ports only, reflecting the current industry practice.
