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Submission of the Asian Shipowners' Forum

Consultation on the CCS's Proposed Recommendation to the Minister With Respect to the Competition Law Block Exemption for Liner Shipping Agreements

The Asian Shipowners' Forum ("ASF") appreciates this opportunity to comment on the Competition Commission of Singapore's Consultation Document. Therein, CCS has proposed to recommend to the Minister for Trade and Industry that the current competition law block exemption for liner shipping agreements be extended in its current form for another five years until 31 December 2020. ASF strongly supports this proposal.

The ASF is an organisation of the national shipowners' associations of Australia, China, Chinese Taipei, Hong Kong, India, Japan, Korea and the Federation of ASEAN Shipowners' Associations comprising Singapore, Indonesia, Malaysia, Myanmar, the Philippines, Thailand, Brunei and Vietnam. The ASF membership together is estimated to represent approximately 50% of the world merchant fleet today. The role of the ASF is to promote the interests of the Asian shipping industry and express its views on key issues affecting this industry, such as the importance of continued antitrust immunity for all types of cooperative liner shipping agreements in Singapore and other international shipping trades.

ASF's specific responses to the three questions in CCS's consultation document are as follows.

Question 1: What are your views on the proposal to extend the block exemption, in its current form, for another five years?

Response: ASF strongly supports the proposal. As discussed in more detail in response to

Question 3, liner shipping agreements (which, under the BEO, include “technical, operational or commercial agreements” as well as agreements on “price” and “remuneration terms”) are permitted in most major trading nations in the world, notwithstanding strong competition law policies. This is because they provide significant benefits, including:

- Agreements have helped Singapore remain a highly competitive world maritime center.
- Agreements promote regular and reliable liner shipping services, preserving a broad range of competitive choices for importers and exporters.
- They provide ocean carriers with a forum to exchange and review market data, supply and demand forecasts, trade flows, and industry trends, and discuss voluntary and non-binding guidelines for rates and charges.
- They help avoid the wild market instability that characterizes trades without such agreements.
- As far as ASF is aware, there have not been major complaints about carrier agreements during the 10 years the BEO has been in effect.

Question 2: What are your views on the impact of the proposed block exemption on your business—would you say it has a positive, negative, or neutral impact?

Response: Over the last 10 years, the results of the block exemption have been overwhelmingly positive, and ASF expects that to continue. As noted by the CCS, Singapore has maintained its position as a “premier international maritime centre” and trans-shipment hub in Asia. (Consultation Document at Paragraph 13). For the ocean carrier members of ASF, the exemption has resulted in legal certainty for their standard business model, which in turn has led to more investment, expanded service options, access to more ports and sailings, significant cost savings, greater efficiency, access to more reliable trade information, and environmental benefits. For shippers (the carriers’ customers), the exemption has meant more service to more ports on better ships at lower cost.

Question 3: Do you have any other comments on the proposal on the block exemption?

Response: The ASF provides the following more detailed comments and supporting evidence on the proposed block exemption extension below.

1. The CCS' Proposal Supports Singapore's Need for Robust Liner Shipping Services

Singapore's exemption for the past 10 years has provided a favorable regulatory climate for the liner shipping industry's traditional business model that has encouraged shipping lines to maintain service to Singapore trades. Liner shipping companies are the engines of international trade, providing regularly scheduled ocean transportation service at key ports for essential manufactured goods, raw materials, and foodstuffs worldwide. Singapore in particular relies heavily on container shipping services for its ability to participate in international trade. As the chart below indicates, despite a relatively small population base, Singapore has historically been one of the world's leading countries in terms of overall port traffic.

Container Port Traffic for Top 10 Economies—2011-2013

Country/economy	2011	2012	Preliminary figures for 2013 ^a	Percentage change 2012/2011	Percentage change 2013/2012
China	144 641 878	160 058 524	174 080 330	10.66	8.76
Singapore	30 727 702	32 498 652	33 516 343	5.76	3.13
Republic of Korea	20 833 508	21 609 746	22 582 700	3.73	4.50
China, Hong Kong SAR	24 384 000	23 117 000	22 352 000	-5.20	-3.31
Malaysia	20 139 382	20 897 779	21 426 791	3.77	2.53
United Arab Emirates	17 548 086	18 120 915	19 336 427	3.26	6.71
China, Taiwan Province of	14 076 069	14 976 356	15 353 404	6.40	2.52
India	10 284 885	10 290 265	10 653 343	0.05	3.53
Indonesia	8 966 146	9 638 607	10 790 450	7.50	11.95
Brazil	8 714 406	9 322 769	10 176 613	6.98	9.16

Source: UNCTAD Review of Marine Transport 2014

Maintaining consistent, quality service is a significant challenge for liner shipping companies. International shipping is a particularly challenging industry. The combination of high capital and fixed costs with unique supply and demand trends in the liner shipping industry can lead to both prolonged depressed rates and highly fluctuating rates, which can have a debilitating effect on service levels. As carriers have struggled to maintain sustainable rates, cost containment and efficient operations are a must.

In order to moderate the extreme volatility and promote more efficient use of vessels, the liner shipping industry developed a business model of cooperative arrangements. These agreements play a critical role in the ability of the industry to continue to make the investment of billions of dollars in ships, new vessel services, equipment, infrastructure, information technology, and other technological innovations needed to keep up with rapidly growing trade volumes.

As the CCS notes in Paragraph 18 of the Consultation Document, Singapore has a very high share of transshipment cargoes (i.e., they do not originate in Singapore). These cargo volumes are discretionary, and can be easily moved to other neighbouring ports in Asia if those ports offer a more attractive business climate. There are an increasing number of credible alternatives to Singapore, particularly in China (e.g., Shenzhen, Shanghai), which has for many years recognized and authorized carrier agreements to operate. An extension of the block exemption in Singapore will ensure a favorable regulatory environment for ocean carriers' standard business model. This, in turn, will encourage carriers to continue making investments in shipping services to Singapore, rather than considering moving to other alternative gateways.

2. The CCS's Proposal is Consistent with the International Standard

The CCS is correct that "antitrust exemptions for liner shipping agreements generally remain the regulatory norm worldwide." (Consultation Document at Paragraph 18). Virtually all of the major trading nations in the world permit these agreements, despite vigorous competition law policies. In the Pacific Rim, China, Japan, the United States, Canada, Taiwan, Korea, and Australia all have long-standing antitrust immunity for liner shipping agreements. Japan recently reviewed its exemption for carrier agreements and renewed it in June 2011, citing benefits to carriers, shippers, and the Japanese economy.

After Singapore renewed its block exemption in 2010, an inter-governmental group of 21 Pacific Rim countries, the Asia Pacific Economic Cooperation ("APEC"), of which Singapore is a member, conducted a detailed study on liner shipping operational agreements (commonly called "VSAs"). APEC has been a leader in encouraging the adoption of competition laws in Pacific Rim countries. Nonetheless, following this study, APEC formally adopted a common position favoring a broad exemption for VSAs from APEC members' competition laws. While cooperative rate discussion agreements were not within its scope, the study further noted that the current exemptions provided by virtually all APEC countries for such agreements were not expected to change.

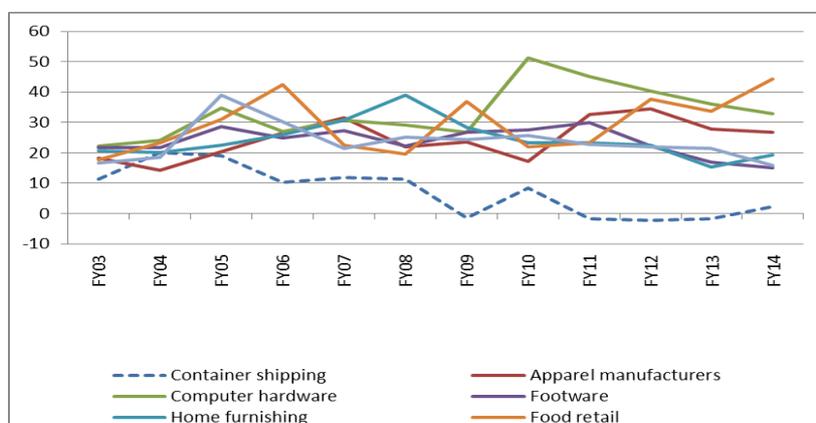
With respect to all types of carrier agreements, APEC affirmed that "the special character of shipping as an international activity creates a need for the coordination and harmonisation of shipping polices." It also recognized that global trade is dependent on scheduled liner shipping services that offer the widest possible geographical coverage at the highest level of efficiency and that "exemptions and exceptions from a competition driven

regulatory framework may be necessary and these will be implemented in a way that minimizes economic distortions, giving consideration to those principles.”¹

The CCS proposal to extend the block exemption is therefore consistent with the international standard treatment of carrier agreements.

3. Liner Shipping Agreements Have Not Led to Excessive Rates or Profits

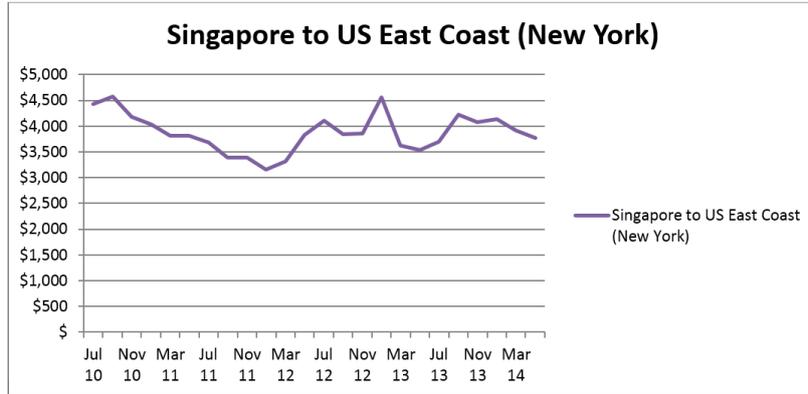
Liner shipping agreements are not the types of agreements that competition laws such as Singapore’s are aimed to restrict. These agreements have not resulted in anti-competitive behavior or results. In fact, these agreements have promoted trade stability, but not carrier profitability. Container shipping has a long history of poor returns and thin operating margins. In the current market climate, many ocean carriers are losing millions of dollars a year. According to well-known independent economists, Drewry Maritime Consultants, between 2008 and 2013, 12 of the 16 largest carriers had negative operating margins before interest costs and taxes. Moreover, as shown in the chart below, the return on capital in liner shipping has consistently been significantly lower than other industries over the past 10 years, including many of the industries the ocean carriers serve.



Source: Drewry Maritime Consultants

In addition, the evidence shows that freight rates in trades with liner shipping agreements have not increased over the last few years, but in fact have dropped to historically low levels. In the Singapore-U.S. trade, for example, the chart below shows that freight rates in March 2014 have not increased, but are in fact lower than they were in July 2010 (when the CCS block exemption was last renewed).

¹ Liner Shipping Competition Policy: Non-Ratemaking Agreement Study, APEC Transport Working Group, November 2008, at 45; APEC Guidelines Related to Liner Shipping, June 2011, at 1.



Source: Drewry Maritime Consultants

The same is true for other trades that allow liner shipping agreements.

4. Liner Shipping Agreements Provide Numerous Efficiencies and Other Benefits to Singapore

As noted by the CCS in its Consultation Document liner shipping agreements have significant and identifiable efficiency benefits, which can only be achieved by virtue of the carriers’ participation in these agreements. As the vast majority of countries who have studied this issue have determined, these agreements are in the public interest for the following reasons.

Operational agreements like VSAs are efficiency-enhancing arrangements that are wholly consistent with the objectives of standard competition laws. Virtually all major ocean carriers participate in one or more VSAs, and most services on major trades today are VSA services rather than individual line services. By allowing carriers to exchange or share space on each other’s vessels, or in some cases integrate their vessels into a coordinated operating arrangement, VSAs enable each carrier to offer more service in more trades with lower capital cost commitments and better utilization of space. The result for carriers is an avoidance of waste, promotion of efficient use of vessel capacity, and a greater incentive to make investments in new and more efficient tonnage.

These efficiencies also benefit importers and exporters, and national economies, by offering broader service coverage at lower cost, on newer, more efficient and technologically up-to-date vessels. The CCS is correct that these agreements have improved “production of liner shipping services and the distribution of goods in Singapore,” and resulted in better

“connectivity and service choice for Singapore’s importers and exporters.” (Consultation Document at Paragraphs 18, 20). Carriers’ participation in VSAs also results in a number of significant environmental benefits by reducing greenhouse gases, which is positive for the public at large. As the CCS notes in Paragraph 19 of the Consultation Document, the carrier members of VSAs continue to compete vigorously against one another on price and service, and therefore VSAs “enhance competition between liners.” It is for all these reasons that “there is broad international consensus on the economic benefits of operational agreements.” (Consultation Document at Paragraph 19).

An extension of the block exemption for rate discussion agreements is likewise essential to Singapore for three main reasons. First, commercial agreements promote rate and service stability, which in turn creates a positive environment for carriers to make investments in vessels, equipment, port facilities, and related infrastructure. As discussed above, these agreements mitigate destructive pricing that historically has plagued this industry. Continued investment in vessels and equipment will ensure that there is adequate capacity in the coming years to meet the growing needs of importers and exporters. It also helps maintain high levels of direct and trans-shipment service to Singapore. Since Singapore’s adoption of its block exemption in 2006, there has been no shortfall in capacity or service to meet the needs of its importers and exporters.

Second, these agreements promote competition. As experience has shown, prolonged depressed rates can lead to fewer overall competitors, either because carriers are forced out the trade, forced out of business, or forced to consolidate. This would leave fewer carriers to make the necessary investments and offer service to shippers in Singapore. It would also ultimately result in higher transport costs if there is a lack of viable competition or adequate shipping capacity.

Third, commercial agreements provide organizations to represent carrier interests in consultations with government regulatory bodies and with designated shipper organizations, which help facilitate dialogue between these parties and address important trade issues. Absent these agreements, it would be considerably more difficult for shippers and carriers to address trade-wide problems or concerns.

As the above analysis and data indicates, the benefits of these agreements are not academic or theoretical. There are over 100 years of experience in the liner shipping industry that proves cooperative carrier agreements support service enhancement and competitive

options. In contrast, there is no evidence that eliminating antitrust immunity for liner agreements in Singapore would yield any benefits. Indeed, the evidence shows that absence of agreements leads to negative consequences for liner service and stability.

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For all of the above reasons, the ASF strongly supports the CCS' proposal to extend the existing block exemption for all types of liner shipping agreements for another five years. The ASF appreciates the opportunity to convey the voice of Asian shipowners on this important issue, and remains at the disposal of the CCS should it desire any further data or information.

Respectfully submitted
ASIAN SHIPOWNERS' FORUM



Harry Shin
Secretary General