

CCS'S RESPONSE TO THE PUBLIC CONSULTATION OF MAY 2015 ON THE PROPOSED RECOMMENDATION TO THE MINISTER ON THE COMPETITION (BLOCK EXEMPTION FOR LINER SHIPPING AGREEMENTS) ORDER

Introduction

1. On 25 May 2015, the Competition Commission of Singapore (“CCS”) conducted a public consultation on its proposed recommendation to extend the block exemption for liner shipping agreements for another five years to 31 December 2020 in its current form. The Competition (Block Exemption for Liner Shipping Agreements) Order (the “BEO”) is a block exemption granted by the Minister for Trade and Industry (the “Minister”) under section 36 of the Competition Act (Cap. 50B) (the “Act”). The BEO exempts a category of liner shipping agreements from section 34 of the Act, which prohibits agreements, decisions and concerted practices that have the object or effect of preventing, restricting or distorting competition in Singapore. The consultation document was posted on CCS’s website.

2. CCS received a total of five submissions in response to the public consultation, which closed on 15 June 2015. We thank all respondents for their feedback and comments on the matter. Four of the respondents were supportive of the proposed extension of the BEO, while one respondent objected to the proposed extension. CCS has carefully reviewed all submissions. This document sets out the main points raised and CCS’s responses to these points.

Responses to the Public Consultation

Freight rates and services

3. Three respondents expressed the view that liner shipping agreements help to avoid market instability that characterise trades without such agreements, provide liners with the stability necessary to commit to long term investments, thereby facilitating improved decision-making, more efficient use of cargo capacity, and maintenance of a range of services.

4. Only one respondent expressed the view that exempting liner shipping has not resulted in more stable freight rates or more reliable shipping services. The respondent believed that the exemption may instead result in higher freight rates and surcharges, and harm the trading community and Singapore. Removing the BEO, in the respondent’s view, will enable our freight rates to be cost competitive and assist to secure Singapore’s position as a key maritime node in this economic region.

5. CCS’s assessment is that the economic benefits resulting from liner shipping agreements are significant, and enough to outweigh any such possible anti-competitive effects. Relying on the findings of the CCS-commissioned consultancy study, which was based on both quantitative and qualitative information provided by

industry stakeholders,¹ as well as feedback from CCS's own consultation with key industry stakeholders,² CCS has assessed that liner shipping agreements contribute to improving the production of liner shipping services and the distribution of goods 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.

Shipping alliances

6. One respondent expressed concern that the liners in four alliances command a very large proportion of major trade routes, and anticipated that overcapacity will lead to mergers between liners, giving rise to greater market concentration and the exercise of market power by large liners within alliances.

7. Under the conditions for exemption under the BEO, liner shipping agreements are required to allow their members to have individual confidential service arrangements. Hence, each member within an alliance has to be able to offer its own service arrangements with customers, even where it is part of an alliance. Based on the information that CCS has obtained, individual private contracting is a common practice in the industry. On anticipated changes to the industry, CCS will continue to monitor market and regulatory developments going forward, including changes in market structure and concentration, as well as the availability and frequency of liner shipping services and their prices. Should a merger between liners be likely to substantially lessen competition in Singapore, the BEO would not prevent CCS from taking action; the BEO does not exempt liners from the application of the section 54 prohibition against mergers that substantially lessen competition.

Regulatory developments overseas

8. One respondent highlighted regulatory developments in the European Union, New Zealand and Australia to support its view that the regulatory environment has changed.

9. CCS has carefully considered the changes in the international regulatory environment in its review. Whilst CCS is aware that there are proposals for Australia and New Zealand to move away from legislative exemption to a block/individual exemption framework for liner shipping agreements, antitrust exemptions for liner shipping agreements generally remain the regulatory norm worldwide. CCS has also taken into consideration, amongst other factors, the size of the Singapore economy,

¹ As part of the consultancy study, CCS sent information requests to 49 liners (including ocean carriers and regional feeders), 15 freight forwarders/non-vessel operating carriers, 23 large and small shippers, the two port operators and Maritime and Port Authority of Singapore in April 2014. CCS received 33 written submissions and the consultants conducted nine interviews.

² CCS sought and obtained feedback from Singapore Shipping Association, Singapore National Shippers' Council, Singapore Logistics Association, Maritime and Port Authority of Singapore, PSA, Economic Development Board, International Enterprise Singapore and SPRING Singapore in January and February 2015.

that Singapore is not a major port of origin or destination, and that a very large proportion of Singapore's container cargo throughput involves transshipment.

CCS's Recommendation to the Minister

10. Pursuant to section 36 of the Act, CCS is of the view that liner shipping agreements, which fulfil the requirements set out in the BEO, continue to meet the criteria set out under section 41 of the Act and qualify for exemption from the section 34 prohibition.

- (a) The connectivity of liner shipping services available in Singapore generates considerable benefits, both directly and indirectly to Singapore, including providing a higher degree of connectivity and service choice for Singapore's importers and exporters.
- (b) Operational agreements, by facilitating the sharing of vessels among liners, increase the utilisation of space on vessels, enable more frequent services, and may enhance competition between liners when they enable a group of smaller liners to provide services that compete with larger liners.
- (c) The economic benefits resulting from liner shipping agreements can be attained without unnecessary restrictions where: (i) liner shipping agreements allow their members to have individual confidential service arrangements and to withdraw from the agreement without penalty; and (ii) their members are not required to adhere to the agreed/recommended prices or disclose confidential information on service arrangements. Hence, these features of liner shipping agreements have been included as conditions for exemption under the BEO.
- (d) Based on the information that CCS has obtained, individual private contracting is a common practice in the industry, and freight rates are generally subject to bilateral negotiations between liners and shippers or freight forwarders. In addition, local shippers enjoy the benefits of competition due to the continued presence of a large number of liners and the associated connectivity of trade routes.

11. Therefore, CCS has recommended that the Minister extend the block exemption for liner shipping agreements for another five years, to 31 December 2020, in its current form.

12. The submissions received in response to the public consultation, and the CCS Explanatory Note on the BEO can be found on CCS's website at www.ccs.gov.sg.