

CCCS GUIDANCE NOTE ON THE BLOCK EXEMPTION FOR LINER SHIPPING AGREEMENTS

(Effective from 1 January 2022)



Introduction

1. The Competition (Block Exemption for Liner Shipping Agreements) Order (the “**BEO**”) exempts liner shipping agreements from section 34 of the Competition Act (Cap. 50B) (the “**Act**”) subject to specified conditions and obligations. Section 34 of the Act prohibits agreements, decisions and concerted practices that have as their object or effect the prevention, restriction or distortion of competition in Singapore (the “**section 34 prohibition**”). This note explains the key features of the BEO, including the latest round of amendments to it which will take effect from 1 January 2022.
2. Section 36 of the Act provides that where the Competition and Consumer Commission of Singapore (“**CCCS**”) is of the opinion that a particular category of agreements is likely to satisfy the net economic benefit criteria set out in section 41 of the Act, it may recommend that the Minister for Trade and Industry make an order exempting that category of agreements from the section 34 prohibition. Such an exemption is known as a “block exemption” and only applies in respect of the section 34 prohibition.
3. The category of agreements that satisfy the net economic benefit criteria are agreements that:
 - a) contribute to improving production or distribution, or promoting technical or economic progress;
 - b) do not impose on the businesses concerned restrictions which are not indispensable to the attainment of those objectives; and
 - c) do not afford the businesses concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.
4. This note is not a substitute for the BEO, the Act, or any subsidiary legislation promulgated under the Act. It may be revised should the need arise. The examples in this note are for illustration only. They are not exhaustive and do not limit the investigation and enforcement activities of CCCS. Businesses in doubt about how they and their commercial activities may be affected by the BEO, the Act, or any subsidiary legislation promulgated under the Act may wish to seek independent legal advice.

Key Features of the BEO

Application of the BEO

5. The BEO applies to liner shipping agreements; these are agreements between two or more vessel operating carriers which providing liner shipping services pursuant to which parties agree to co-operate in the joint provision of liner shipping services in respect of one or more of the following: (i) technical, operating or commercial arrangements; (ii) price; or (iii) remuneration terms. A liner shipping agreement that meets the conditions and obligations of the BEO is exempt from the section 34 prohibition. For the avoidance of doubt, conduct by liner operators that amount to an abuse of a dominant position are not exempt under the BEO and are still subject to

section 47 of the Act¹. Likewise, mergers between liner operators that have resulted, or may be expected to result, in a substantial lessening of competition are not exempt under the BEO and are still subject to section 54 of the Act².

6. Liner shipping agreements that meet the conditions and obligations set out in paragraph 5 of the BEO are, *prima facie*, considered to have met the net economic benefit criteria under section 41 of the Act. CCCS will generally not conduct an examination of such agreements.
7. For more elaboration on the conditions and obligations set out in paragraph 5 of the BEO and the consequences in event of a breach of these conditions and obligations, please refer to sections below on “Conditions and Obligations to be an Exempted Liner Shipping Agreement” and “Cancellation of the Exemption”.

Commencement and Duration

8. The Minister for Trade and Industry has made an order to extend the BEO till 31 December 2024, with the BEO regime in this guidance note taking effect from 1 January 2022.

Market share limit and market definition

9. Under paragraph 4 of the BEO, the parties to a liner shipping agreement do not exceed the market share limit if they hold, in a market, an aggregate market share of not more than 50% calculated by reference to:
 - (i) the volume of goods carried; or
 - (ii) the aggregate cargo carrying capacity of the vessels operating in the market measured by freight tonnes or 20-foot equivalent units.
10. As long as the aggregate market share of the parties to the liner shipping agreement does not exceed the market share limit on either one of the two methods of measurement set out in paragraph 9 above, the agreement will be considered to be below the market share limit.
11. Parties to a liner shipping agreement shall be deemed not to exceed the market share limit if they hold, in a market, an aggregate market share of not more than 55% for a period of not more than two consecutive calendar years. This provision recognises that short term fluctuations in the aggregate market share of parties to the liner shipping agreement are unlikely to have a significant long-term impact on the market.
12. Guidance on how to define a relevant market can be found in the *CCCS Guidelines on Market Definition*. Consistent with its general approach on defining markets in a competition analysis, CCCS will consider generally accepted competition law principles and case law when defining markets on a case-by-case basis. To provide

¹ Section 47 of the Act prohibits conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore.

² Section 54 of the Act prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services.

some practical guidance, the definition of the relevant markets may include the following geographic definitions:

- (i) With respect to long-distance oceanic trades, the market may be defined as ‘trade’ between wide geographical regions, for example, North Europe and East Asia.
 - (ii) With respect to regional and feeder trades, the market may be defined as the provision of country-to-country shipping services (for example, Singapore/Indonesia or Singapore/Thailand).
13. However, the relevant markets may be wider (or narrower) than these definitions to the extent that either demand or supply side considerations may suggest a wider (or narrower) market. For example, if carriers can readily switch capacity from other regions without significant investment, the relevant market could be much wider than just the current ‘trade’.
14. It will be for the parties to assess, or to seek independent legal/expert advice on whether their aggregate market share exceeds the market share limit, and whether the agreement satisfies the conditions and obligations for exemption under the BEO. The aggregate market share of the parties to the agreement is to be calculated based on the parties’ overall capacity and not limited to the capacity contributed to the agreement.

Conditions and Obligations to be an Exempted Liner Shipping Agreement

Application to certain categories of liner shipping agreements

15. To qualify for exemption, a liner shipping agreement, regardless of the aggregate market share of the parties to the agreement, must adhere to the three conditions set out under paragraph 5(1) of the BEO (which are reproduced below at paragraphs 16 to 18).
16. First, the agreement must be a vessel sharing agreement (“**VSA**”) for liner shipping services, or a price discussion agreement (“**PDA**”) for feeder services. For the purposes of the BEO:
- (i) VSA refers to an agreement between two or more liner operators pursuant to which the parties to the agreement 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. VSAs include consortia, slot exchange agreements, slot charter agreements, joint service agreements, slot swap agreements and “alliances” or “strategic alliances”. Liner operators may also discuss and agree on slot rates to be charged to one another for the charter of vessel space under a VSA, but not on prices or remuneration terms offered to third parties.
 - (ii) PDA refers to an agreement between two or more liner operators pursuant to which the parties to the agreement discuss commercial arrangements relating to the provision of liner shipping services, including prices and remuneration terms offered to third parties. Only PDAs for the provision of feeder services fall under the scope of the BEO.

- (iii) Feeder services refer to liner shipping services provided to a liner operator operating a liner shipping service on a route between Singapore and a port outside of Southeast Asia or South Asia, where a vessel is used to transport containers owned by the liner operator on a route between Singapore and another port in Southeast Asia or South Asia. In this regard, “feeder services” refer to services provided to main lines (that are liner operators operating routes between Singapore and another port outside of Southeast Asia or South Asia, and own the containers transferred on the feeder vessel), where the objective of such a service is to consolidate or redistribute goods to and from the main line customers.

The scope of the exemption does not include those services provided to customers that are not liner operators (e.g. non-vessel operating common carriers, freight forwarders, cargo owners), or services provided to other feeders (that are liner operators operating routes between Singapore and another port within Southeast Asia or South Asia). However, the fact that a main line, separate from its purchase of feeder services, itself provides services on routes between Singapore and another port in Southeast Asia or South Asia, does not prevent it from being considered a main line customer for the feeder service, where it purchases the feeder service in connection with its main line service. In addition, the scope of the feeder services in the BEO covers services provided by both feeders that are affiliated to main lines and feeders that are independent (i.e. common feeders).

- 17. Second, the agreement must allow the parties to the agreement:
 - (i) to offer, on the basis of individual confidential contracting, their own service arrangements; and
 - (ii) to withdraw from the agreement on giving any agreed period of notice without financial or other penalty such as, in particular, an obligation to cease providing liner shipping services in a market, whether or not coupled with the condition that such activity may be resumed only after a certain period has elapsed.
- 18. Third, the agreement must not require the parties to the agreement to mandatorily adhere to a tariff or disclose to other parties to the agreement confidential information concerning service arrangements.
- 19. These conditions have been included in the BEO to facilitate competition between parties to a liner shipping agreement, and limit the extent of anti- competitive behaviour that liner operators can engage in through the liner shipping agreement.

Where parties to a liner shipping agreement exceed the market share limit

- 20. Where the aggregate market share of the parties to a liner shipping agreement exceeds the market share limit but fulfils the three conditions set out under paragraph 5(1) of the BEO (elaborated above at paragraphs 16 to 18) , the parties are required to comply with additional filing and notification obligations to CCCS and transport users as set out under paragraph 5(2) of the BEO if they wish to enjoy the benefit of the exemption.

21. These filing and notification obligations are included in the BEO to ensure that transport users and CCCS are kept aware of those liner shipping agreements where the aggregate market share of the parties exceed the market share limit.
22. There is no requirement to file a liner shipping agreement with CCCS or notify the particulars of the liner shipping services under the agreement where the aggregate market share of the parties does not exceed the market share limit. CCCS is of the view that such agreements, provided they fulfil the three conditions set out under paragraph 5(1) of the BEO (elaborated above at paragraphs 16 to 18), pose minimal risks of appreciable adverse effect on competition.
23. For further elaboration on the filing and notification procedure to CCCS, please refer to Annex I and Annex II.
24. For further elaboration on notifying transport users of information concerning any tariff and structure and service level of the liner shipping services (which is one of the obligations included in the BEO), please refer Annex III.

Grace Period

25. A grace period of 6 months is provided for parties to fulfil the obligations in paragraph 5(2) of the BEO if the market share limit is exceeded (please refer to paragraph 6 of the BEO). This grace period is extended by a further 6 months where the increase in market share is due to a liner operator which is not a party to the liner shipping agreement withdrawing from the market.
26. If parties fail to fulfil the obligations in paragraph 5(2) of the BEO within the applicable grace period, the agreement will cease to benefit from the BEO.

Coverage for VSAs for liner shipping services and PDAs for feeder services in respect of carriage of cargo by container

27. The scope of the BEO for VSA is not restricted to carriage of cargo by container. This means that such agreements can also cover carriage of cargo by means other than containers, for example, car carrier services. This approach reflects the view that it is desirable to have an exemption that allows liner operators participating in VSAs to collaborate to bring about technical, and operational improvements in their services.
28. On the other hand, the scope of the BEO for PDA for feeder services is restricted to the carriage of cargo by container, whereby containers owned by main line customers are transferred onboard vessels providing such feeder services. This approach reflects how feeder services that operate routes between Singapore and another port in Southeast Asia or South Asia operate in practice.

Cancellation of the Exemption

29. Paragraph 7 of the BEO provides for the cancellation of the block exemption in respect of a liner shipping agreement. This is in line with the provisions of section 37(2) of the Act.

30. Where the three conditions set out under paragraph 5(1) of the BEO (elaborated above at paragraphs 16 to 18) are not satisfied, the exemption is cancelled in respect of that agreement, from such date as CCCS may specify.
31. Where there has been a failure to comply with the filing and notification obligations specified in the BEO or where CCCS finds in a particular case that the agreement has effects which are incompatible with the provisions of section 41 of the Act, CCCS may cancel the exemption from such date as CCCS may specify.
32. An example of a situation where an agreement would have effects incompatible with the provisions of section 41 of the Act would be one where the parties to the agreement engage in concerted behaviour (including tacit concerted behaviour) to effectively disclose confidential information. Such behaviour could substantially reduce the scope of independent contracting and pricing behaviour. This would be contrary to the intention of a condition for the exemption, that the liner shipping agreement must not require disclosure of confidential information concerning service arrangements.
33. Whether or not the parties to a liner shipping agreement exceed the market share limit, the parties claiming the benefit of the exemption shall, upon notice being given by CCCS and within such period of time as may be specified by CCCS, demonstrate that the provisions of the BEO are satisfied.

Cancellation Procedure

34. If CCCS proposes to make a decision for, or in relation to, the cancellation of the block exemption in respect of a liner shipping agreement (“**cancellation decision**”), CCCS shall give notice of this to each person whom CCCS considers is, or was, a party to the agreement. The notice shall contain information referred to in regulation 15(1) of the Competition Regulations 2007. Opportunities to make representations and access CCCS’s file relating to the proposed cancellation decision will also be carried out in accordance with regulation 15 of the Competition Regulations 2007.
35. When CCCS has made a cancellation decision, it shall give notice of the decision to each person whom CCCS considers is or was a party to the agreement and such notice will set out the facts on which CCCS bases the decision and CCCS’s reasons for making the decision. This cancellation decision will also be published.

Appeals

36. Pursuant to regulation 7 of the Competition (Appeals) Regulation, a cancellation decision may be appealed to the Competition Appeal Board. Such an appeal must be brought within 2 months of the date on which the party is informed of the cancellation decision or the date of the publication of the cancellation decision, whichever is the earlier.

INSTRUCTIONS FOR FORM MBEO

For parties making a filing relating to paragraph 5(2)(b)(i) or 5(2)(b)(ii) of the BEO, please comply with the following filing and notification requirements under the Competition (Block Exemption for Liner Shipping Agreements) Order (“BEO”).

1. Filing and Notification Procedures

- 1.1 Filings and notifications under the BEO, including any supporting documents, are to be submitted electronically via the following weblink.

Relevant provisions of the Block Exemption Order	Online Form MBEO
Filing relating to paragraph 5(2)(b)(i) of the BEO – <ul style="list-style-type: none"> • Filing of a liner shipping agreement 	<i>Form MBEO (Part 1)</i> 
Filing relating to paragraph 5(2)(b)(ii) of the BEO <ul style="list-style-type: none"> • Filing of variations or amendments to a liner shipping agreement previously filed with CCCS 	<i>Form MBEO (Part 2)</i> 

- 1.2 The online Form MBEO supports attachments of up to **3Mb** per attachment. If your attachment exceeds this file size, please email the attachment to CCCS_feedback@cccs.gov.sg. Please specify “BEO” and the name of the agreement in the subject of the email.
- 1.3 CCCS will only accept the filing of such agreements, or variations or amendments thereto, that are finalised and, if in writing, signed by all parties to the liner shipping agreement.

2. Timeframes

- 2.1 CCCS expects strict compliance with the time period specified below. Where the time periods for filing below cannot be complied with strictly, please state in the Form MBEO that the filing is out of time and the reason(s) why this is the case. CCCS will evaluate the application on a case-by-case basis.
- 2.2 Where the liner shipping agreement takes effect on or after 1 January 2021, such agreement must be filed with CCCS in accordance with Form MBEO by **no later than**

14 days after the agreement takes effect.³

- 2.3 Where any variation or amendment is made to a liner shipping agreement that has previously been filed with CCCS and such variation or amendment takes effect on or after 1 January 2021, such variation or amendment together with the varied or amended agreement must be filed with CCCS, **upon CCCS's request**, in accordance with Form MBEO **within such time as stipulated by CCCS**.
- 2.4 Where parties seek to satisfy paragraph 5(2)(b) of the BEO upon the expiry of the grace period referred to in paragraph 6(1) or (2) of the BEO, the liner shipping agreement and/or any variation or amendment to the agreement must be filed with CCCS **at least 14 days prior to the expiry of the grace period**.

3. Supporting Documents

- 3.1 Please submit a soft copy of the written liner shipping agreement, any variation or amendment to the written agreement, any other relevant documents (where applicable) or such other document(s) requested by CCCS (as the case may be). Please note:
- (a) Where the liner shipping agreement, any variation or amendment, any other relevant document (where applicable) or such other document(s) requested by CCCS (as the case may be) is in a language other than the English language, a duly-certified translation of the document into the English language is to be provided, in accordance with the requirements set out in regulation 24 of the Competition Regulations 2007; and
 - (b) Where any part of the liner shipping agreement, any variation or amendment, any other relevant document (where applicable) or such other document(s) requested by CCCS (as the case may be) is not in writing, a memorandum providing a full description of the details of the same is to be provided.
- 3.2 Each undertaking making the filing or notification is required to submit a soft copy of the signed declaration (digitally signed or otherwise) with respect to the information provided in the Form MBEO. The declaration form can be found in this Annex II.

³ For avoidance of doubt, parties can file their Agreement with CCCS prior to the Agreement taking effect.

FORM MBEO DECLARATION

DECLARATION

Under section 77 read with section 83 of the Competition Act (Cap. 50B) (the “Act”), it is an offence, punishable by a fine not exceeding \$10,000 or imprisonment for a term not exceeding 12 months, or both, to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, its officers may be guilty of an offence pursuant to section 81 of the Act.

Declaration

The undersigned declare and confirm that all information given in connection with the Form MBEO and all supporting documents are correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates based on the underlying facts.

Signature(s)

Name of Entity (in block capitals):
Name of authorised signatory (in block capitals):
Designation:
Date:

MAKING INFORMATION AVAILABLE AND NOTIFICATION TO TRANSPORT USERS

Pursuant to paragraph 5(2)(d) of the Competition (Block Exemption for Liner Shipping Agreements) Order (“**BEO**”), please comply with the following requirements to make available to transport users information concerning (i) any tariff; and (ii) the structure and service level of the liner shipping services, under the agreement relevant to the market, as CCCS may specify (the “**information**”).

1. Making the information available to transport users

1.1 The following information⁴ should be made available to transport users **at least 14 days prior to the information taking effect**, either by allowing for the examination of documents at the offices in Singapore of the parties or their agents; or at a publicly available internet website:

- (a) tariffs (as defined in the BEO);
- (b) service frequency;
- (c) shipping schedules;
- (d) ports of call;
- (e) port rotation;
- (f) ship specifications; and
- (g) ship replacement programs.

1.2 The information must also be available to transport users upon request at a reasonable cost in paper or electronic form.

2. Notification when the information previously made available to transport users is varied or amended

2.1 Under paragraph 5(2)(e)(ii) of the BEO, parties are also required to notify transport users of the details of any variation or amendment to the above list of information as specified by CCCS.

2.2 To notify transport users, parties may make available the relevant details on such variation or amendment at a publicly available internet website or through any mode of widespread public circulation by which the transport users in Singapore would be notified. In addition, parties should, in any event, provide a physical address from which relevant details on the variation or amendment may be obtained by transport users. Such notification should be made available to transport users **at least 14 days prior to the variation or amendment taking effect**.

⁴ These categories of information set out in paragraph 1.1 may be revised from time to time as CCCS considers necessary.