CCCS'S RESPONSE TO THE PUBLIC CONSULTATION ON THE PROPOSED RECOMMENDATION TO THE MINISTER REGARDING THE BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS

Introduction

1. Section 34 of the Competition Act (Cap. 50B) (the "**Competition Act**") prohibits anti-competitive agreements.[1] However, the Minister for Trade and Industry (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 prohibition. 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. An agreement generates a "net economic benefit" if there are significant economic benefits that outweigh the anticompetitive effects, and the restrictions on competition are necessary to achieve the economic benefits and do not substantially eliminate competition.

2. At present, the only block exemption in Singapore is the Competition (Block Exemption for Liner Shipping Agreements) Order (the "**BEO**"), which exempts certain types of liner shipping agreements ("**LSAs**") from the section 34 prohibition of the Competition Act, subject to certain conditions and obligations. LSAs are agreements between two or more vessel-operating carriers which provide liner shipping services, i.e. the transport of goods on a regular basis between ports in accordance with timetables and sailing dates advertised in advance.

3. Under the current BEO, liners are permitted to engage in vessel sharing agreements or price discussion agreements, as long as these agreements[2]:

   a. allow each party to the LSA to have individual confidential service arrangements with their own customers;
   b. allow each party to the LSA 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.

4. The BEO was first introduced in 2006 and has subsequently been extended in 2010, 2015 and 2020. The current BEO expires on 31 December 2021.[3]

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[1] 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.
[2] Paragraph 5(1) of the BEO.
[3] 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.

5. On 14 July 2021, CCCS conducted a public consultation on its proposed recommendation to the Minister to extend the BEO for three years from 1 January 2022 to 31 December 2024, in respect of:

   a. Vessel sharing agreements[4] for liner shipping services; and
   b. Price discussion agreements[5] for feeder services[6].

6. At the close of the public consultation on 4 August 2021, CCCS received a total of ten responses from the industry. Respondents included industry associations, a main line, feeders, a port operator and a freight forwarder. CCCS thanks all respondents for their feedback and comments. This document summarises the feedback received from the public consultation and CCCS's responses to the feedback.

CCCS's Responses to the Public Consultation

7. In summary, feedback from respondents indicated that the proposed recommendation to extend the BEO would have a positive impact on industry players and generate significant benefits for Singapore. Respondents supported the extension of the BEO in respect of vessel sharing agreements for liner shipping services and were largely neutral or supportive in respect of price discussion agreements for feeder services. However, the majority of respondents expressed a preference for a longer extension of the BEO of five years, instead of the proposed three years, for greater legal certainty or lead time for investment into new vessels.

Vessel Sharing Agreements for Liner Shipping Services

8. All respondents expressed support for CCCS's proposed recommendation in relation to vessel sharing agreements for liner shipping services. Liners noted that vessel sharing agreements provide significant benefits to Singapore, including more frequent and reliable liner shipping services, cost efficiencies, lower cost of entry and expansion, efficiencies in port capacity utilisation and environmental benefits. Vessel sharing agreements also preserve a range of competitive choices for importers and exporters and help Singapore remain as a highly competitive international maritime centre. Liners participating in vessel sharing agreements continue to compete vigorously on prices and exemption for vessel sharing agreements continues to be supported internationally. Respondents noted that the exemption will provide legal certainty for liners which will help preserve Singapore's role as a major international maritime centre and premier hub port.

9. The feedback is consistent with CCCS's assessment that vessel sharing agreements for liner shipping services improve the production of liner shipping services in Singapore.

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[4] Vessel sharing agreements are agreements between two or more liners 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, and which do not include any discussion or agreement on prices or remuneration terms to third parties.
[5] Price discussion agreements are agreements between two or more liners which discuss commercial arrangements relating to the provision of liner shipping services, including prices and remuneration terms to third parties.
[6] Feeder services are liner shipping services provided to main lines on regional trade routes between Singapore and ports that the main lines may not serve (e.g. main lines operate larger vessels that may not be able to call at smaller ports).

Price Discussion Agreements for Feeder Services

10. All respondents, except one, expressed support for or were neutral to CCCS's proposed recommendation to extend the BEO in relation to price discussion agreements for feeder services. An industry association and several feeders expressed support as the exemption allows feeders to provide efficient services, which in turn attracts main lines to Singapore. Several industry associations noted that the majority of main lines have withdrawn from price discussion agreements globally and therefore did not express a position with respect to CCCS's recommendation on price discussion agreements. However, one respondent was concerned that price discussion agreements may provide feeders with the power to align and increase their charges in today's market conditions.

11. The feedback with respect to price discussion agreements for feeder services was generally consistent with CCCS's assessment that such agreements improve the production of liner shipping services and the distribution of goods in Singapore. With respect to the concern expressed by the respondent, CCCS notes that the potential for feeders to leverage on price discussion agreements to align and increase their charges to main line customers is limited even in today's market conditions, as feeders still have to separately negotiate their services with main lines, which are likely to possess bargaining power.

Duration of Extension of the BEO

12. The key issue raised by respondents related to the proposed three-year duration for the extension of the BEO. The majority of respondents expressed a preference for a longer extension of the BEO of five years for greater legal certainty or lead time for investment into new vessels (which may take about three to four years to build). On the other hand, some respondents considered that the proposed three-year duration is reasonable and representative of the current business cycle.

13. On balance, CCCS maintains that the extension of the proposed BEO for three years provides sufficient legal certainty and time for industry players to make long term investments. The three-year duration for exemption also allows CCCS to conduct more regular reviews so that the BEO remains relevant and current.