

**COMMENTS TO THE  
COMPETITION COMMISSION OF SINGAPORE  
ON  
PROPOSED SINGAPORE  
BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS**

**From**

**Alban Tay Mahtani & de Silva  
39 Robinson Road  
#07-01 Robinson Point  
Singapore 068911**

**Name: Sandra Seah  
Tel: 6248-9429  
Email: [sandrasedh@tmdlaw.com.sg](mailto:sandrasedh@tmdlaw.com.sg)**

## A. INTRODUCTION

1. This submission is made in response to the Proposed Singapore Block Exemption Order for Liner Shipping Agreements released by the CCS for public consultation by:

Name: Sandra Seah (Ms)  
Company: Alban Tay Mahtani @ de Silva  
Address: 39 Robinson Road #07-01 Robinson Point  
Singapore 068911  
Tel: 6428 9429  
Email : [sandrasedh@atmdlav.com.sg](mailto:sandrasedh@atmdlav.com.sg)

2. In this submission:

“**Act**” refers to the Competition Act 2004.

“**BEO**” refers to the proposed Singapore Block Exemption Order for Liner Shipping Agreements issued by the CCS for public consultation on 6 April 2006.

3. We find that the BEO does, in general, strike a good balance between anti-competitive concerns and recognition of the international arena in which shipping lines operate. The BEO also provides good guidance on the types of liner activities which will be accorded exemption from the s34 prohibition, as well on the types of prohibited behaviour which will lead to the cancellation of the exemption.
4. Our comments are primarily directed towards obtaining further clarification on the practical issues that may arise in the interpretation of the BEO.

## B. TABLE OF CONTENTS

1. Summary of Major Points
2. Statement of Interest
3. Comments on BEO
4. Conclusion

## **C. SUMMARY OF MAJOR POINTS**

### **1. Definition of ‘liner shipping agreement’**

The requirement for cooperation in the “joint provision of liner shipping service” in the definition of what would be an exempted “liner shipping agreement” appears to cover neither the usual liner conferences nor the full range of consortia and alliances. This is because liner conferences set common freight rates but usually do not engage in operational co-operation and do not provide joint liner shipping services. We would therefore like to understand the rationale for inclusion of the requirement for “joint provision of liner shipping service” in the definition of “liner shipping agreement”.

### **2. Fixing of “Price” related components**

We would like to seek clarification as to whether the agreements on price-related components, such as terms and policies for payment (such as credit terms for payment) or rebates or loyalty arrangements, will also benefit from exemption under the BEO.

### **3. Filing of certain agreements**

We would like to understand the rationale for the filing requirements. We would also more guidance on the practical compliance with such filing requirements, particularly if the parties’ aggregate market share slips to below 50%.

### **4. Developments in other jurisdictions**

We would like to know CCS’ views on how the developments in other jurisdictions such as EU and Australia may impact on the continuation or application of the BEO.

### **5. Bulk (Non-Liner) services**

We would like to request the CCS for guidance on the application of the CA to the bulk transport sectors as well.

## **D. STATEMENT OF INTEREST**

ATMD is a Singapore law firm which provides legal services to both local and foreign clients.

ATMD's legal services include advising on commercial transactions, mergers & acquisitions, regulatory law, intellectual property and competition law.

ATMD's Competition Law Practice Group comprise of members with corporate, intellectual property and dispute resolution experience, and who have been working on competition law matters and compliance issues.

The firm's capabilities in the area of competition law are the product of experience in transactional matters involving various markets, such as energy, pharmaceuticals, petrochemicals and information technology.

In this response, we have focused our comments on the clarifications on the nature of the exemptions granted by the BEO, which are practical issues which we foresee that shippers and carriers may encounter in the implementation of the BEO. We hope to achieve as much clarity and certainty in the BEO as possible for the benefit of our clients in the shipping industries.

## **E. COMMENTS ON BEO**

### **2. Definition of 'liner shipping agreement'**

- 1.1 The BEO provides section 34 exemption for a "liner shipping agreement", which is defined to mean "an agreement between two or more vessel-operating carriers which provide liner shipping services pursuant to which the parties agree to co-operate in the joint provision of liner shipping services ..." in respect of technical arrangements or price (3<sup>rd</sup> line of the definition of "liner shipping agreement").
- 1.2 We understand that the CCS intends this BEO to cover all relevant types of liner shipping agreements, and that the definition is intended to be expansive.

- 1.3 However, the requirement for the parties to cooperate on price in the **“joint provision of liner shipping service”** in the definition of what would be an exempted “liner shipping agreement” does not appear to cover the usual liner conferences.
- 1.4 Traditionally, liner conferences set common freight rates (this is covered in paragraph 3(1)(b) of the BEO) but do not engage in operational co-operation and do not provide joint liner shipping services. Therefore, it would therefore appear from the definition of “liner shipping agreement” that such liner conferences are not clearly exempted. The same reasoning applies to discussion or rate agreements which recommend prices, but which usually do not culminate in joint provision of service.
- 1.5 As for consortia and alliances, these do not usually set prices, but the carriers may engage in operational co-operation to share vessels and to operate to a joint schedule, so these appear to be the clearest category of liner shipping agreements which are exempted under the BEO.
- 1.6 We would like to understand the rationale for inclusion of the requirement for **“joint provision of liner shipping service”** in the 3<sup>rd</sup> line of the definition of “liner shipping agreement” as we understand that the BEO is intended to cover the usual conferences and discussion agreements.
- 2. Fixing of “Price” related components**
- 2.1 We understand that the exemption will extend to ancillary charges such as CAFs and BAFs and most likely, terminal handling charges (THCs) and inland transport tariffs, since all such charges have a “reasonable nexus to the provision of liner shipping services”.
- 2.2 However, in the context of a liner shipping agreement, shipping lines may also agree on other price-related components, such as :
- (a) terms and policies for payment, such as credit terms for payment, or freetime; and
  - (b) rebates or loyalty arrangements.
- 2.3 We would like to seek clarification as to whether agreements on such price related components will also benefit from the exemption on “price-fixing” under the BEO.

### **3. Filing of certain agreements**

- 3.1 We understand that the CCS only requires parties to a liner shipping agreements to file their agreement with the CCS if the aggregate market share of the parties exceeds 50%. The reason for the 50% threshold is that the CCS has taken into account the fact that Singapore is a small economy and that 50% is a figure which does not cross the dominance threshold (60%).
- 3.2 However, it is not clear from the consultation paper what the rationale for the filing requirement is, and we would like to seek clarification in this respect.
- 3.3 On an operational level, parties may join or withdraw from conferences, bringing about fluctuations in the market share thresholds. The requirement for filing above the 50% threshold will impose unnecessary costs on parties to conferences, who will need to make regular assessments of their operating markets and market shares. The provision in paragraph 4(4) of the BEO that parties shall be deemed not to exceed the market share limit if they hold an aggregate market share of not more than 55% for a period of not more than 2 consecutive years appears to still require the parties to make regular assessments to find out their market share over a 2-year period. The filing requirements will therefore seem to impose additional compliance costs on the carriers who are parties to liner agreements.
- 3.4 On the other hand, the filing requirement does not appear to provide clear benefits for the shippers. The tariffs would in any event be open knowledge or published, and there is no ancillary provision empowering the CCS or 3<sup>rd</sup> parties to contest the tariffs. The safeguard is that if tariffs are manifestly unreasonable, there will be recourse to the CCS to cancel the exemption per paragraph 6(2)(b) of the BEO.
- 3.5 If the aggregate market share of the parties to an agreement which has been filed later slips to below 50%, would this be considered a “variation” which requires further filing? or would the parties have to de-register their conference? An all- or-nothing approach to filing in this instance may actually lend more regulatory certainty to the parties to liner shipping agreements.

#### **4. Developments in other jurisdictions**

- 4.1 Section 40 of the CA provides that the CCS may make a recommendation to the Ministry of Trade & Industry to revoke the BEO if “in the opinion of the Commission, it is appropriate” to do so.
- 4.2 We understand that CCS’ approach is to have a regulatory environment which is broadly aligned with that in other major jurisdictions. Therefore, if UK and/or Australia change their competition regime and revoke the liner conference exemption, would CCS also follow suit and revoke the BEO?
- 4.3 There may also be a slight complication if one follows the debate in the EU where there is a likelihood that the liner conference block may be revoked, while the consortia block exemption remains. In Singapore’s case, the BEO is a “one size fits all” single exemption for all categories of liner shipping agreements, and it will be interesting to decide on whether the entire BEO should be retained or revoked if the EU revokes the conference block exemption but retains the consortia block exemption.
- 4.4 We would like to find out CCS’ views on how the developments in other jurisdictions may impact on the continuation or application of the BEO.

#### **5. Bulk (Non Liner) services**

- 5.1 Bulk transport services handle the economically important transport of oil, gas and agricultural products. Such services will also benefit from an exemption from competition law if the objective is to maintain the stability of prices, and to facilitate technical and operational cooperation among bulk carriers. We would like to request the CCS to give guidance on the application of the CA to this sector.

## **F. CONCLUSION**

1. Thank you for this opportunity to comment on the proposed BEO, which provides certainty to shippers and carriers alike that the maritime practice in Singapore will be largely compatible with the regulatory regimes of Singapore's major trading partners.
2. We would like to understand the rationale for including the requirement that the liner shipping agreement has to culminate "in the joint provision of liner shipping services" in order to be accorded exemption. We would also like clarification as to whether the fixing of price-related components such as the terms of credit for payment fall within the exemption of price-fixing in the BEO.
3. In addition, we would like to know the rationale for the filing requirements, which seem to impose additional compliance costs on carriers with little attendant benefits to shippers.
4. Finally, we would like to find out CCS' views on how the competition developments in other jurisdictions, particularly EU and Australia, may impact on the continuation or application of the BEO. We would also like to request for guidance on the application of competition law to bulk transport sector.