

Proposed Competition Act (Block Exemption for Liner Shipping Agreements) Order 2006

In exercise of the powers conferred by section 36 of the Competition Act (Chapter 50B), the Minister for Trade and Industry hereby makes the following Order:

Arrangement of Provisions

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Proposed Competition Act (Block Exemption for Liner Shipping Agreements) Order 2006

1. Citation and commencement

This Order may be cited as the Competition Act (Block Exemption for Liner Shipping Agreements) Order 2006 and shall be deemed to have come into operation on 1 January 2006.

2. Duration

Unless earlier varied or revoked in accordance with the Act, this Order shall continue up to and including 31 December 2010.

3. Definitions

(1) In this Order, unless the context requires otherwise:

liner operator means an undertaking which provides liner shipping services under a liner shipping agreement;

liner shipping agreement means 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 one or more of the following:

- (a) technical, operational or commercial arrangements; or
- (b) price;

liner shipping services:

- (a) means the transport of goods on a regular basis on a particular route or routes between ports and in accordance with timetables and sailing dates advertised in advance and available, even on an occasional basis, to any transport user against payment; and
- (b) includes inland carriage of goods occurring as part of through transport;

market means any market for liner shipping services in which the parties to a liner shipping agreement operate under the agreement;

price:

- (a) means the price for which a liner operator performs or offers to perform liner shipping services or any part of liner shipping services; and
- (b) includes any charge, other than the base freight rate, with a reasonable nexus to the provision of liner shipping services, whether arising by reason of the provision of the liner shipping services or by reason of the occurrence of an uncertainty;

service arrangement means an agreement concluded between one or more transport users and a liner operator under which, in return for an undertaking to commission the transportation of a certain quantity of goods over a given period of time, a transport user receives an individual undertaking from the liner operator to provide an individualised service which is of a given quality and specially tailored to its needs;

tariff:

- (a) means a list of prices for which, pursuant to a liner shipping agreement, liner operators agree they will offer liner shipping services to transport users; but
- (b) does not include prices under a service arrangement;

through transport means continuous transportation by a combination of sea and inland carriage between origin and destination for which a single amount is charged by a liner operator and which is offered or performed by one or more carriers, at least one of which is a liner operator; and

transport user means

- (a) an undertaking which has entered into, or demonstrates an intention to enter into, a contractual or other arrangement with a liner operator for the shipment of goods; or
- (b) an association of shippers.

(2) A paragraph which is expressed to apply to, or in relation to, an agreement shall be read as applying, with the necessary modifications, equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

4. Exempt agreements

(1) A liner shipping agreement is, in respect of a market, exempt from the section 34 prohibition if:

- (a) the parties to the agreement do not exceed the market share limit in the market;
- (b) it allows liner operators:
 - (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; and
- (c) it does not require any of the following activities to be undertaken by the liner operators:
 - (i) mandatory adherence to a tariff; and
 - (ii) the disclosure, whether to other liner operators or otherwise, of confidential information concerning service arrangements.

(2) Where the parties to a liner shipping agreement exceed the market share limit in a market, the agreement is, in respect of the market, exempt from the section 34 prohibition if:

- (a) the agreement satisfies sub-paragraphs (1)(b) and (c);
- (b) the parties file a copy of their liner shipping agreement and any variations or amendments thereto with the Commission in such mode and manner as the Commission may specify:
 - (i) not less than 14 days prior to the agreement, variation or amendment taking effect; or
 - (ii) by 31 July 2006,whichever is later.
- (c) the parties make available upon request to the Commission details of the transport terms, any tariff, and the structure, service level offerings and other aspects of the operation under the agreement relevant to the market in such mode and manner as the Commission may specify ;
- (d) the parties make available to transport users the particulars referred to in sub-paragraph (2)(c):
 - (i) by examination of documents at the offices in Singapore of the parties or their agents; or
 - (ii) at a publicly available internet website; andin any event, upon request at a reasonable cost in paper or electronic form; and
- (e) the parties notify any amendments or variations to the particulars referred to in sub-paragraph (2)(c), to the Commission and transport users in such mode and manner as the Commission may specify not less than 14 days prior to the amendments or variations taking effect.

(3) 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

- (a) the volume of goods carried; or
- (b) the aggregate cargo carrying capacity of the vessels operating in the market measured by freight tonnes or 20-foot equivalent units.

(4) The parties to a liner shipping agreement shall be deemed not to exceed the market share limit if the parties hold, in a market, an aggregate market share of not more than 55% calculated by reference to sub-paragraphs (3)(a) or (b) for a period of not more than two consecutive calendar years.

(5) The parties to a liner shipping agreement claiming the benefit of an exemption shall, upon notice by the Commission and within such period of time as may be specified by the Commission, demonstrate that sub-paragraph (1) or (2), as the case may be, are satisfied.

5. Grace period

(1) Where the parties to a liner shipping agreement exceed the market share limit but do not satisfy paragraph 4(2), the exemption in paragraph 4(1), if applicable, shall continue to apply for a period of six months following the end of the calendar year during which the limit was exceeded.

(2) The period in sub-paragraph (1) shall be extended for another six months if the excess is due to the withdrawal from the market of an undertaking which is not a party to the liner shipping agreement.

(3) After expiry of the periods referred to in sub-paragraphs (1) or (2), the exemption in paragraph 4(1) shall cease to apply.

(4) A party seeking to satisfy paragraph 4(2) upon the expiry of the period referred to in sub-paragraph (1) or (2), as the case may be, shall be taken to have satisfied paragraph 4(2)(b) if the agreement and any variation or amendment thereto is filed with the Commission not less than 14 days prior to the expiry of the period.

6. Cancellation of exemption

(1) Where there has been a breach of paragraph 4(1)(b) or (c), the exemption in paragraph 4(1) or (2), as the case may be, shall be cancelled from such date as the Commission may specify.

(2) Where:

(a) there is a failure to comply with paragraph 4(2)(b), (c), (d) or (e); or

(b) the Commission finds in a particular case that the agreement has effects which are incompatible with the provisions of section 41,

the Commission may cancel the exemption in paragraph 4(1) or (2), as the case may be, from such date as the Commission may specify.

Made this [] day of [] 2006.