

CCS'S RESPONSE TO THE PUBLIC CONSULTATION OF SEPTEMBER 2010 ON PROPOSED RECOMMENDATIONS TO THE MINISTER WITH RESPECT TO THE BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS 2006

Introduction

1. On 14 September 2010, the Competition Commission of Singapore ("CCS") conducted a public consultation on its proposed recommendation to extend the Competition (Block Exemption for Liner Shipping Agreements) Order 2006 ("BEO") for five years to 31 December 2015, without substantial changes to its scope. 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) of Singapore ("the Act"). The Consultation Document was posted on CCS's website.

2. CCS received a total of 8 responses to the public consultation, which closed on 4 October 2010. We thank all respondents for their feedback and comments on the matter. Some respondents were supportive of the proposed extension of the BEO; there were also suggestions of how the proposed BEO could be amended. CCS has carefully reviewed all responses. This document sets out some of the main issues raised and CCS's responses to them.

Guiding Rationale and Framework of the Proposed Block Exemption Order

3. CCS is of the view that the rationale for the BEO in 2006 remains relevant, and the BEO continues to fulfil the criteria under Section 41 of the Act, for the following reasons:

- a. As a small and open economy, the presence of an extensive network of liner shipping companies has played a large part in contributing to Singapore's status as a premier international maritime centre for liner shipping operations;
- b. The presence of a large number of major shipping companies has important flow-through benefits for local shippers and the Singapore economy. In particular, the concentration of activity within Singapore generates considerable benefits, both directly and indirectly, including providing a higher degree of connectivity and service choice for Singapore's importers and exporters beyond that which would have arisen if the port had simply developed to handle only imports and exports. In this way, Singapore's shippers benefit from the port's success as a transshipment hub;

- c. Antitrust exemptions for liner shipping remain the regulatory norm and a block exemption will provide continued certainty to the shipping industry.

4. Therefore the intention of the BEO is to ensure that within an overall regulatory environment that promotes and sustains competition in Singapore: (i) agreements which promote the rationalization of liner shipping operations by means of technical, operational and commercial arrangements are facilitated; and (ii) exporters and importers have ongoing access to frequent and reliable liner shipping services at prices that are internationally competitive.

5. In reviewing the submissions received, CCS continues to be guided by the following principles:

- a. the BEO should be underpinned by a robust competition/economic efficiency framework;
- b. it must not place unnecessary administrative burden on the industry; and
- c. it should provide sufficient flexibility to allow for a response to international maritime developments.

Submissions on the Proposed Recommendations

Minor changes to the filing requirements

6. One respondent raised the concern that the additional requirement to provide reasons for all amendments and variations of agreements will extend to the provision of reasons for administrative variations such as changes/withdrawals of membership, changes to members' names and/or changes in the geographical scope of the Agreement. It was highlighted that because the filing of Agreements are conducted by liner secretariats on behalf of members to the Agreement, "excessively onerous filing requirements" might result in increases in fees payable by liners for such secretariat services.

7. In revising the BEO, CCS continues to be guided by the consideration that any change should not place an unnecessarily onerous compliance burden on filing parties. CCS has considered carefully the impact of the requirement to provide reasons for all amendments and variations of agreements, as well as explored possible alternative approaches to such a requirement. CCS notes that the additional information required is information that is generally readily available to the filing party. Hence, CCS is of the view that such a requirement will facilitate CCS's understanding of the context to the amendments and variations filed, without adding significantly to the compliance burden on filing parties.

Alignment with overseas jurisdictions

8. Several respondents cited recent developments in antitrust regulation in the liner shipping industry in the EU and the US, and the need for CCS to align its regulatory environment with such developments.

9. CCS has considered the changes in the international regulatory environment carefully in its review. CCS notes that antitrust exemptions remain the regulatory norm for the liner industry globally, and for most of Singapore's major trade partners. The recommendation to extend the BEO is intended to provide certainty to industry players and ensure continued benefits for the Singapore economy, in view of Singapore's status as an international maritime hub.

10. The developments in the EU which took place in October 2008 also coincided with a major global economic downturn, which severely affected the liner industry, and the proposed legislative changes in the US have yet to be passed into law. In light of the current fragility of the global economy, CCS is of the view that additional time will be needed to understand the impact of regulatory changes overseas and whether a similar approach would be suitable for Singapore.

Duration of proposed extension

11. Feedback was received suggesting that a shorter extension of the BEO will suffice, in view of a legislative proposal in the US to end antitrust exemption for rate-making agreements.

12. CCS is of the view that a five-year time frame consistent with the previous exemption is reasonable given the current developments in the shipping industry. CCS may review the BEO before its expiry should circumstances so warrant.

13. CCS will closely monitor developments, both in Singapore and internationally, to assess whether the BEO remains relevant. Any significant changes to the provisions in the BEO will be subject to careful evaluation and to a public consultation process.

Net Economic Benefit

14. Concern was expressed in one submission that liners have not met the burden of proof that conferences and carrier agreements bring about net economic benefit in order to justify the case for an exemption from competition and anti-trust laws. In particular, the respondents expressed the view that "the onus of responsibility for those seeking exemptions from the normal application of competition policy must rest on the beneficiaries and those seeking such exemptions to ensure that such restrictions on competition are in the public interest".

15. In this regard, CCS wishes to clarify that it may only make a recommendation to the Minister for a block exemption if it has been satisfied that a category of agreements have net economic benefit set out under section 41 of the Act. CCS's

recommendation to the Minister was arrived at after taking into account a comprehensive list of factors, including local considerations such as Singapore's market conditions and status as a transshipment hub; the implications of international developments in the maritime industry on the Singapore economy and the regulatory regimes of its major trade partners; the global nature of the shipping trade; as well as inputs from more than 30 industry players spanning key groups of stakeholders such as regulators, shippers, shipping liners, and logistics service providers.

16. Following its review, CCS is of the view that liner shipping agreements that fulfil the requirements set out in the BEO bring about net economic benefit, and have adequately met the criteria under section 41 of the Act.

Conclusion

17. Pursuant to section 36 of the Competition Act (Cap 50B), CCS is of the view that liner shipping agreements that 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. Therefore CCS has recommended that the Minister extend the block exemption for liner shipping agreements for five years, to 31 December 2015 without changes to its current scope and architecture. CCS has also decided to put in place the proposed minor changes to the filing requirements.

18. The revised Form MBEO, along with the CCS Explanatory Note on the Block Exemption for Liner Shipping Agreements can be found on CCS's website at www.ccs.gov.sg.