

Submission to Competition Commission
Comments on Supplementary Representation from the Hong Kong Liner Shipping Association on Proposed Block Exemption Order For Certain Liner Shipping Agreements

By

Hong Kong Consumer Council

Introduction

1. To recap, on 14 September 2016, the Competition Commission (the Commission) published a proposed block exemption order (BEO) in respect of certain liner shipping agreements in response to an application submitted by the Hong Kong Liner Shipping Association ("HKLSA").
2. The Consumer Council (the Council) supports the Commission's proposal that voluntary discussion agreements (VDAs) would not be covered by the BEO and shares the Commission's preliminary view that this category of liner shipping agreement does not fall within the scope of the exclusion for agreements enhancing overall economic efficiency.
3. The Council has stated clearly in its submission to the Commission in 2016 that no VDAs with elements related to price fixing and market sharing should be exempted. The Council has concerns that the exemption on vessel sharing agreements may give rise to the detrimental effects on market competition that could also impinge negatively on consumer welfare, through increased costs for Hong Kong businesses being passed on to consumers.
4. The Council also submitted that VDAs (by which shipping companies can voluntarily disclose to each other their charges, shipping schedules and other competitively sensitive information), are hard to distinguish from information exchanges of future price/quantity information which are normally considered to facilitate concerted anticompetitive actions by the involved undertakings.

Revised VDA Facilitating Concerted Practices

5. It is noted that the HKLSA submitted a supplementary representation proposing that VDAs be covered by the proposed BEO. HKLSA stated that the scope of the Revised VDA would be confined to undertakings to discuss and exchange information including the following: supply and demand trends, carrier costs (general and Hong Kong specifics)' vessel utilization and capacity levels, general industry issues and general economic issues/trends; regulatory developments and compliance issues; best practices (general and Hong Kong specific) in various aspects, including services contract rules, terms and conditions; and revenue/

rates indices based on aggregated historical data, with a carve-out for Hong Kong –specific rate discussion.

6. The Council is of the view that several types of information to be exchanged under the revised VDA, such as service of carrier’s fleets, expected individual carrier deployments, vessel utilization and capacity data, are competitive sensitive information which could assist undertakings to coordinate possible concerted pricing strategies.
7. There are also great reservations on the revised VDAs as they may enable liners to exchange cost information. For example, information on bunker cost mentioned in paragraph 2.5, section (B) of the supplementary representation is an important component of a carrier’s cost and therefore a key input factor in determining pricing. In addition, by allowing members of VDAs to exchange information about the bottom line or break-even point with regard to revenue and cost figures for a given trade lane would allow undertakings to build and to enforce a tactical alignment amongst members in pricing and supply of cargo services.

Conclusion

8. The Council does not see any justifiable reason for the trade to have VDAs legitimized which may involve discussion on market information, such as carrier market share, general industry issues etc. This sort of information will almost certainly be collected and provided by market research companies or will be stipulated in VSAs to serve similar basic information purposes. Without solid evidence from overseas studies on any adverse effect, in both rates and service quality, due to the withholding of a block exemption of VDAs, the Council urges the Commission to take a precautionary approach and not to grant an exemption. The Council does not see any clear economic benefits that will accrue from maintaining the arrangements found in the revised VDAs.

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