中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China
立法會議員易志明
Hon. Frankie Yick Chi-Ming, Legislative Councillor

30th November, 2016

The Honourable Anna Wu, GBS, JP
Chairperson
Competition Commission
Room 3601, 36/F, Wu Chung House
213 Queen's Road East
Wanchai, Hong Kong

Dear Ms Wu,

Re: Support for a Competition Act Exemption for All Types of Cooperative Liner Shipping Agreements

As a member and Transport representative of the Hong Kong Legislative Council ("LegCo"), I am filing these comments in response to the Hong Kong Competition Commission's Proposal to issue a block exemption order for Vessel Sharing Agreements (VSAs), but not for Voluntary Discussion Agreements (VDAs). I support the HKCC's decision with respect to VSAs, but strongly oppose HKCC's tentative decision not to extend a similar exemption to VDAs, which also provide important benefits and efficiencies to carriers, Hong Kong importers and exporters, and the Hong Kong economy as a whole.

Putting the Applicants' request for a block exemption for both VSAs and VDAs into context, the HKCC is no doubt aware of the critical importance of ocean shipping to Hong Kong's overall economy, and its ability to participate in international commerce. As with any economy built on trade rather than an abundance of natural resources, Hong Kong has had to rely heavily upon its port traffic and infrastructure over the years. Today, scores of major international shipping lines offer hundreds of port calls in Hong Kong every week, and thus liner shipping continues to be a major industry in Hong Kong. This is largely made possible through the carriers' participation in important agreements like VSAs and VDAs. Hong Kong is a vital hub serving the South-East and East-Asia region, and serves as a major gateway to China. Together with associated shore-side transportation operators, the liner shipping and port industries employ a very large number of workers in Hong Kong. This significant achievement in itself is evidence that the competitive shipping environment that currently exists in Hong Kong allows business to flourish and prosper. It is important to note that this competitive environment exists today, with both VSAs and VDAs presently serving Hong Kong.

In light of the above, it is crucial that the HKCC maintain the status quo and exempt both VSAs and VDAs, as they are complementary and support each other's critical functions. VDAs allow for carrier discussions on market and industry trends and data, which allows carriers to make more informed decisions and provide some stability to shipping markets, while VSAs allow for the sharing of vessels to provide the most efficient possible service to shipper customers. Both types of agreements are necessary to achieve the full range of benefits and efficiencies for industry stakeholders. It appears that the HKCC has already found that VSAs promote numerous efficiencies, most notably allowing carriers to offer more service in more trades to meet the needs of their customers.

However, I find the HKCC's preliminary conclusions with respect to the efficiencies brought on by VDAs to be fundamentally flawed. It seems clear that the HKCC is reading the standards for an exemption in the Ordinance far too narrowly. Specifically, HKCC appears to have overlooked the efficiencies that VDAs bring not just to the carrier's shipper customers, but also the wider Hong Kong economy in general and all consumers in Hong Kong. Indeed, VDAs seek to avoid the extreme price volatility and prolonged depressed rates that have historically plagued the liner shipping industry, and provide carriers with macro-economic trade information which promotes better decision-making. Over time, non-compensatory rates (as currently exist in virtually all major ocean trades today) will lead to greater consolidation and more bankruptcies, which will harm competition in the long-term. The liner industry is already seeing this today, with the recent announcement that a major ocean carrier—Hanjin Shipping—went bankrupt largely because of poor economic conditions in the industry. Similarly, three Japanese carriers—NYK Line, K-Line, and MOL—recently announced that they are merging their container shipping businesses. That announcement was made on the same day that these carriers recorded a collective half-year operating loss of almost $500 million. The carriers cited the prolonged difficult market conditions and a lack of profitability that led to the need for consolidation. Other consolidation has taken place as major international carriers like CMA CGM and APL, China Shipping and COSCO, and Hapag Lloyd and United Arab Shipping Company have all merged or announced mergers in an effort to survive the current economic climate.

VDAs thus promote competition by ensuring that rates remain stable for carriers in order to continue to maintain adequate services to meet the needs of their customers. A more stable commercial environment also encourages carriers to invest in better ships and infrastructure, which helps all stakeholders. Access to timely and accurate trade information through VDAs also helps small to medium carriers compete more effectively with larger carriers. This leads to increased service options and better price competition for the carrier's customers. In short, VDAs <u>promote</u> competition and competitive options in the industry. Without these agreements, all consumers in Hong Kong will suffer. Distribution of goods will suffer, which means the wider economy will suffer. Viewed through this lens, the Applicants have demonstrated the efficiencies of VDAs and shown why they are deserving of an exemption in Hong Kong.

Another reason an exemption for VDAs in Hong Kong is important is because it would align Hong Kong's legal regime with other major jurisdictions (particularly in Asia) that also exempt these type of Agreement. Indeed, exemptions from competition laws for VDAs are the standard in all major trading countries in Asia and the Pacific Rim. Among Hong Kong's largest trading partners, Singapore, China, Japan, and the United States all exempt these agreements, as does South Korea, Taiwan, Canada, and Australia. The Commission should exempt these important agreements from the Competition Ordinance in order to preserve their ability to continue to operate in Hong Kong, and prevent Hong Kong's legal system from being at odds with its key trading partners around the world. If the Commission does not grant an exemption for VDAs, LegCo is fearful that such a decision could force carriers to consider investing in and serving alternative port ranges in other countries where their prevailing business model is supported. Reduced shipping services in Hong Kong would hurt all importers and exporters. It would also hurt the Port of Hong Kong, and the Hong Kong economy as a whole. By contrast, a favourable regulatory climate in Hong Kong as demonstrated by providing the carriers legal certainty for both VSAs and VDAs through a broad block exemption would encourage the industry to continue to call Hong Kong.

This is a critical time for the Hong Kong shipping industry. As a leading international maritime centre and a potential key player in the One Belt One Road network, Hong Kong would be severely disadvantaged in these policy objectives if no block exemption for VDAs is granted. Hong Kong's ability to participate in the One Belt One Road initiative would be severely compromised if Hong Kong were to damage its shipping industry through a disadvantageous regulatory climate. An exemption for both VDAs and VSAs would afford Hong Kong the opportunity to take full advantage of its position as a key transhipment hub.

For the above reasons, I support the liner shipping industry's request for a block exemption for all types of liner shipping agreements (both VSAs and VDAs), and urge the Competition Commission to reconsider its tentative conclusions with respect to VDAs.

Yours faithfully,

Hon. Frankie YICK Chi-ming, JP