

14 September 2016

Competition Commission publishes proposed block exemption order for certain liner shipping agreements

The Competition Commission (Commission) today (14 September 2016) published a proposed block exemption order (BEO) for certain liner shipping agreements.

In accordance with section 16 of the Competition Ordinance (Ordinance), the Commission invites interested parties to make representations to the Commission about the proposed BEO.

The publication of the proposed BEO follows the Commission's consideration of an application for a BEO (Application) from the Hong Kong Liner Shipping Association (HKLSA).

The HKLSA sought a BEO covering both vessel sharing agreements (VSAs) and voluntary discussion agreements (VDAs). VSAs (which include consortia, slot exchange agreements, joint service agreements and alliances) are agreements between shipping lines on certain operational arrangements. VDAs are agreements pursuant to which shipping lines discuss certain commercial matters relating to particular shipping routes.

The Commission is proposing to issue a BEO for VSAs as a result of its preliminary assessment of the Application and in light of the economic efficiencies generated by this category of liner shipping agreement.

The proposed BEO declares that activities usually undertaken pursuant to VSAs are excluded from the application of the first conduct rule in the Ordinance subject to the following conditions:

- The parties to the VSA do not collectively exceed a market share threshold of 40%;
- The VSA does not authorise or require shipping lines to engage in cartel conduct; and
- Shipping lines must be free to withdraw from the VSA without incurring a penalty on giving reasonable notice.

The Commission does not propose to issue a BEO for VDAs as it has formed the preliminary view that this category of liner shipping agreement does not fall within the scope of the exclusion for agreements enhancing overall economic efficiency.

The proposed duration of the BEO is five years. The Commission proposes to review the BEO four years from its commencement date, but in any event may review the BEO at any time it considers appropriate (subject to section 19(3) of the Ordinance).

The Commission proposes transitional arrangements, in the form of a grace period of six months from the date of the Commission's final decision on the Application for parties to (i) VSAs not benefiting from the proposed BEO and (ii) VDAs, so as to allow such parties to make any changes they may consider necessary to their commercial arrangements.

The Commission received the Application in December 2015. It conducted a preliminary consultation on the Application between January and March 2016 and received responses from a range of stakeholders including customers, trade associations, chambers of commerce, container terminal operators, non-HKLSA shipping lines and Government bodies. The views of these various stakeholders have assisted the Commission's consideration of the Application.

In addition to the proposed BEO, the Commission has published a Statement of Preliminary Views outlining the Commission's reasons for its proposed decision on the Application. A final decision on the Application and on whether to issue a BEO will be made after the Commission has considered any representations received during the section 16 consultation.

The proposed BEO and the Statement of Preliminary Views are available in English and Chinese on the Commission's website at www.compcomm.hk.

Interested persons are invited to make representations to the Commission by 18:00 on 14 December 2016. The Commission requests that representations be made in writing.

Representations should, preferably, be sent by email to consultation@compcomm.hk, with the case reference number BE/0004 quoted in the subject line of the email.

Representations may also be sent by fax or by post as follows:

By Fax: +852 2522 4997

By Post: Representations on Case BE/0004
Competition Commission
Room 3601, 36/F Wu Chung House
213 Queen's Road East, Wanchai
Hong Kong

Representations received will be posted on the website of the Commission. If a representation contains confidential information, a non-confidential version of the representation should be provided to the Commission for the purpose of uploading to the Commission's website.

Further details on how to make representations or other aspects of this consultation are outlined in the Commission's *Notice issued under section 16 of the Competition Ordinance of a proposed block exemption order for certain liner shipping agreements*, which is available on the Commission's website.