The Hong Kong Liner Shipping Association

Response to Hong Kong Competition Commission's Public Consultation under Section 20 of the Competition Ordinance

Case Number: BE/0004

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31 May 2022

1. Introduction

1.1 The Hong Kong Liner Shipping Association ("**HKLSA**"), as the original applicant for a block exemption order on behalf of the liner shipping industry in Hong Kong, welcomes the Hong Kong Competition Commission's ("**Commission**") notice dated 5 May 2022 of its proposal to renew the block exemption order for vessel sharing agreements ("**Notice**").

1.2 HKLSA fully supports the proposed renewal of the Competition (Block Exemption For Vessel Sharing Agreements) Order 2017 ("**Order**") for another four years until 8 August 2026. Vessel sharing agreements ("**VSAs**") are still widely used by ocean carriers in all global trades including Hong Kong, and the vast majority of liner shipping services in Hong Kong continue to be provided by VSAs. These agreements have been facilitating market competition and generating economic efficiencies in Hong Kong, and have played a critical role during the pandemic to enable carriers to quickly and effectively respond to the fast-changing market conditions. The renewal of the Order is of paramount importance to provide the industry with legal certainty and stability, which, in turn, will encourage the use of the Hong Kong port and thus contribute to the overall success of Hong Kong's economy, local businesses and consumers.

1.3 HKLSA provides its comments to some of the key points raised in the Notice below.

2. Importance of a renewed Order for carriers, consumers and the Hong Kong port

2.1 HKLSA strongly agrees with the Commission's preliminary conclusion that VSAs continue to generate economic efficiencies and consumer benefits in Hong Kong, by allowing shipping lines to offer broader service coverage and higher service frequency, thereby reducing the costs of entry and expansion.[1] In order to realise these efficiencies, it is essential that the Order is renewed so that there is sufficient legal certainty for shipping lines to participate in and plan their businesses using VSAs.[2]

2.2 In addition, HKLSA supports the Commission's preliminary finding that the renewal of the Order is necessary to ensure that the Hong Kong port remains an attractive destination for shipping lines.[3] As the Commission pointed out in the Notice, there are various other jurisdictions which offer similar exemptions from competition law for VSAs, including Australia, Canada, China, the European Union, Israel, Japan, Malaysia, New Zealand, Singapore, South Korea and the US. Given the global nature of the liner shipping industry, it is important for Hong Kong to have a consistent regulatory framework with its international trade partners so as to maintain Hong Kong's connectivity to the international shipping networks.

2.3 Enhancing the Hong Kong port's attractiveness is also in line with the policy agenda of both Hong Kong and China's central governments. It is part of China's national development strategy for the Greater Bay Area to promote Hong Kong's status as an international maritime centre. Legal

[1] See paragraph 59 of the Notice.
[2] See paragraph 78 of the Notice.
[3] See paragraph 82 of the Notice.

certainty and a globally consistent regulatory environment are key factors that carriers take into account when determining whether to service a specific port. The renewal of the Order is therefore vital to ensure the competitiveness of the Hong Kong port amongst its trading partners.

3. Significance of the renewed Order during the COVID-19 pandemic

3.1 As the Commission discusses in the Notice, the COVID-19 pandemic has brought about unprecedented disruption to global supply chains. Whereas normally the patterns of product demand, sourcing, production, and distribution are relatively stable and predictable, the pandemic threw all this into disarray. The COVID-19 pandemic has brought about an unprecedented and sustained surge in demand for goods, which, coupled with strict lockdown measures around the world, and more recently in Asia, led to severe supply chain disruptions, including port and inland congestion, container imbalance and slow repositioning, inland transportation disruption, inventory and labour shortages. These issues, coupled with challenging supply and demand imbalances, have generally contributed to higher freight rates, increased delays and reduced service reliability. However, as acknowledged by the Commission, there is no evidence that they are caused or exacerbated by VSAs.[4]

3.2 To the contrary, VSAs are more important than ever as an effective tool to alleviate the strain on the global supply chain. VSAs enable carriers to quickly respond to volatile market movements and ensure the full utilisation of all available slots in the time of high demand. For instance, in response to the unprecedented demand spike from mid-2020, shipping lines have been adding all available capacity and introducing new services to specific trades, which contributed to a higher frequency and broader coverage of services. VSAs have facilitated carriers' ability to work with their partners to recalibrate and shift capacity in accordance with the latest demand patterns. Such flexibility has been vital to carriers which have been battling the rapidly changing demand for liner shipping services amidst the pandemic, and would not have been possible if carriers did not have the legal certainty that allows them to enter into VSAs with confidence. VSAs also generally help to reduce port congestion by allowing the use of fewer (but larger) vessels and the joint use of port terminals. These benefits arising from VSAs are also recognised by the Commission in the Notice.

3.3 As such, HKLSA fully agrees with the Commission's preliminary conclusion that the Order continues to be merited and effective, given the pro-competitive effects and considerable benefits to the liner shipping industry and global supply chain, particularly in the midst of the unprecedented challenges presented by the ongoing pandemic.

4. Market share limit

4.1 HKLSA notes that the Commission is proposing to maintain the existing market share limit in the Order. In the Notice, the Commission also highlights that HKLSA does not oppose the inclusion of the market share limit if the Order were to be renewed.[5]

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[4] See paragraph 30 of the Notice.

[5] See paragraph 72 of the Notice.

4.2 Whilst that is indeed the case, for completeness, HKLSA would like to clarify that it remains of the view that a market share limit is not necessary, as the liner shipping industry has remained highly competitive both globally and in Hong Kong. Under VSAs, carriers are only cooperating on operational matters, and not on commercial or joint marketing matters. As noted by the Commission in the Notice, "*VSA members still compete with each other (as well as with non-VSA members) on price and other competitive parameters such as customer service*."[6] It is therefore highly unlikely that any relevant competitive harm would arise which requires a market share cap to be included.

4.3 As such, HKLSA does not believe that a market share threshold is necessary, but does not oppose the Commission's proposal to maintain a market share limit of 40% (or 45% for a period of two consecutive years).

5. Conclusion

5.1 Since its issuance in 2017, the Order has been working well and is continuing to generate economic efficiencies for the benefit of all stakeholders. In the long run, the global supply chain will need stability and flexibility to recover from the COVID-19 pandemic. Legal certainty and a consistent regulatory environment are critical for this process. As the liner shipping industry remains a key driver of the Hong Kong economy and the success of the Government's plans for the Greater Bay Area, the renewal of the Order will be crucial in facilitating the development of the Hong Kong port and enhancing Hong Kong's status as an international maritime centre and regional logistics hub.

[6] See paragraph 21 of the Notice.