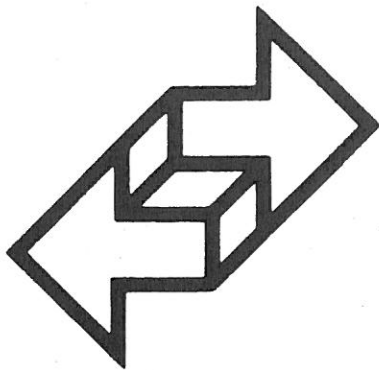




THE HONG KONG SHIPPERS' COUNCIL

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Ms. Rose Webb
Chief Executive Officer
Competition Commission (Hong Kong)
Room 3601, 36/F, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

(By email and post)

9 March 2017

Dear Ms. Webb,

Comment on Hong Kong Liner Shipping Association (supplementary representation)

Regarding Hong Kong Liner Shipping Association (HKLSA)'s supplementary representation submitted to Competition Commission (the "Commission") on 27 February 2017, The Hong Kong Shippers' Council (the "Council") wishes to make the following comments:

1. The supplementary representation was submitted way after the consultation window ended on 14 December 2016. It should not be included in the consideration of the Proposed Block Exemption Order review of the Commission. It violates procedural justice as the belated submission allows HKLSA an advantage of being able to scrutinize all other representations for preparing the proposed Revised VDA Scope. The supplementary representation, the proposed Revised VDA Scope in particular, should be rejected from the beginning.
2. Regarding the Revised VDA Scope, the Council wishes to highlight the following:
 - 2.1 While liners claim that they would accept carving-out Hong Kong – specific pricing discussions within VDAs, there is no safeguard mechanism in the regulatory regime to ensure that liners would adhere to the requirement. All discussions will be closed-door and private, and there is no policing mechanism. It is a condition that cannot be enforced by a regulatory authority, and hence cannot be permitted in the first place.

2.2 Liners ask for permission to discuss and exchange information among VDA members including supply and demand forecasts, vessel utilization and capacity levels, carrier costs, trade growth and development and international cargo flows. Liners' requests is not information on aggregate, but individual carriers' level. The Council wishes to highlight the threats to competition from such a request:

- a. Allowing VDA members to discuss and exchange information including individual member's trade and cargo flow forecast, market share, vessel deployment plans, etc, the request essentially entails giving green light for capacity management and supply manipulation. When suppliers in the market are allowed to discuss their supply volume, capacity to supply, market share, etc, it would be all too easy for suppliers to jack up prices by restricting supply. It is indeed a main function of any cartels.
- b. Carriers request allowance of sharing commercial information including internal statistics, market share, etc. This again will place their client shippers at a very disadvantageous position. Carriers can take advantage from information that is exclusive to and collected collectively among themselves while conducting negotiations with their clients. Shippers, on the other hand, are deprived of this information. The majority of shippers are medium to small size enterprises (SMEs) which could be easy prey of the well informed and resource-rich carriers. It is needed to bear in mind that the majority of carriers belong to powerful business or state-owned group or conglomerates. Carriers and their client shippers never have a level playing field from the start.
- c. Carriers request sharing information on costs including break-even costing figures. This kind of request is unusual and unlikely be allowed in most competition regimes. It simply facilitates setting of price floors, or minimum price as there is no commercial sense to go lower them. When a red light is clearly seen, there is no reason why anyone will tempt to cross it.
- d. Carriers need to exchange information on general industry issues such as port congestion, equipment repositioning, piracy, container weighing, etc.

The Council wishes to point out that there are many open and public forums and conferences to take about these kind of issues. There are TPM Conference, TPM Asia, Asian Logistics and Maritime Conferences, Intermodal Asia, Pasadonia, etc. In addition, there are official consultation mechanisms such as the Hong Kong Maritime and Port Board, the Logistics Development Council, etc. The industry will never be short of occasions and platforms to discuss issues of general concern.

In addition, there is no need to discuss all these issues in private.



- e. Carriers request to discuss service contract terms.

By allowing carriers to discuss process and structure, carriers are free to discuss how service contract terms such as surcharge levels are established. It will facilitate aligned adoption and practice.

- f. Carriers claim that VDA serves as an important forum for outreach to carriers' customers, and representatives of the VDAs will meet with shipper groups.

With individual carriers, their client shippers can still negotiate rates and charges. But with those VDAs representatives, it is simply impossible for these representatives to say things other than what the VDA members have agreed. Shippers prefer discussions and negotiations with their service providers, not organisations that would only pass on agreed and collective messages. We attach a surcharge notice from Intra-Asia Discussion Agreement (Appendix 1). Would anyone consider that this notice contribute to a two-way dialogue?

- g. Liners need block exemption because self-assessment requirement cannot provide the need certainty.

If self-assessment is generally applied to all industries in Hong Kong, the Council cannot see why the liner industry is so unique from other industries and should be given special privileges.

- h. Liners claim that there would be efficiency gains as VDAs will help Hong Kong to maintain its role as a transshipment hub and a maritime centre.

The Council fails to see any justification for such claim. VDAs by producing negative effect on competition will only scarce shippers away. This will definitely not helping to achieve the objective liners claimed.

- i. Liners claims that VDAs allow carriers information to calculate vessel deployment.

The Council wishes to draw the commission's attention that when liners get together and discuss, there is a great likelihood that price will be jacked up. At present, liners are discussing regrouping and the liners market will be dominated by 3 VSAs. During this reshuffle exercise in which carriers meet and discuss, capacity have been withdrawn and freight rates climb substantially. Appendix 2 shows the freight index in the transpacific trade. Although the industry is in a low season, transpacific rates are three times as high as in the peak season of 2016.



- j. Liners claim VDAs are in dispersible to obtain the needed information.

As explained earlier, if liners really mean obtaining information of general industry issues, there are many ways to access this information. On the other hand, allowing carriers exclusive and sensitive information, it will cause the playing field tilted too much in liners' advantage, and expose their client shippers to undue risk of depredation.

Summary

1. HKLSA's supplementary representation was submitted beyond deadline and should not be considered. It is a violation of procedural justice should the commission consider it.
2. HKLSA's proposed Revised VDA Scope contain too many flaws and misstatements. The Revised VDA Scope should be rejected.

Yours faithfully,



Willy Lin
Chairman

CC: Mr. Stephen Ryan, Of Counsel, Competition Commission (Hong Kong)

Encl.

1. IADA Surcharge Notice (Appendix 1)
2. Transpacific Freight Index and regrouping of alliances (Ocean Alliance poised to dominate transpacific trades - Lloyd's List ~ 28 April 2016) (Appendix 2)



**[Confidential Appendices not included in
version for publication on Competition Commission website]**