14 December 2016

Proposed Block Exemption Order for Vessel Sharing Agreements

Submission by the Global Shippers' Forum to the Hong Kong Competition Commission

This GSF submission is provided in response to the Hong Kong Competition Commission's proposal to issue a block exemption for vessel sharing agreements in accordance with the procedure in Section 16 of the Competition Ordinance.

Global Shippers' Forum

The GSF was formally incorporated and registered as a non-governmental organisation in the United Kingdom in June 2011. The GSF was created in 2006 as a successor to the informal Tripartite Shippers' Group established in 1994. The GSF is the international shippers' organisation that represents thousands of shippers internationally through GSF member associations in Asia, Africa, Europe and North and South America. The main focus of the GSF is to promote the interests of shippers as users on international transportation services across a broad spectrum of issues, including policy, commercial and technical matters.

Introduction

The Global Shippers' Forum (GSF) welcomes the opportunity of commenting on the consultation in regard to the proposed block exemption for vessel sharing agreements.

In addition to providing a wider international shipper perspective and input into the consultation, this submission fully endorses the submissions of the Hong Kong Shippers' Council. In particular, the GSF fully supports the intention of the HKCC to exclude carrier discussion agreements from the exemption. Such agreements are prohibited under EU competition law and excluded from the scope of the EU Consortia Block Exemption. Such agreements are considered by the EU Competition Commission and the OECD 2002 report on liner conferences to be 'hard core' competition restrictions which provide no benefit to shippers in the form of enhanced maritime services or reduced costs[1]

In the Asia/Asia-Pacific area, the GSF and its members have been contributors to the wider international policy debate regarding antitrust treatment of liner shipping agreements. The GSF participated in the review of non-rate making agreements by APEC leading to the adoption of non-binding guidelines recommended for use in Asia-Pacific shipping trades.

[1] See http://www.oecd.org/dataoecd/13/46/2553902.pdf

The GSF has recently launched a new policy paper on The Implications of Mega-Ships and Alliances for Total Supply Chain Efficiency. The paper draws on the growth of alliances and increased consolidation of the liner shipping industry and the importance of effective oversight and monitoring of consortia/vessel sharing agreements to ensure the maintenance of effective competition for shippers. A copy of the report and recommendations can be viewed via the following link which we hope the HKCC will find helpful in the context of its consultation on the proposed exemption of consortia/VSA's:

https://www.globalshippersforum.com/document/mega-ships/

Hong Kong Competition Commission Consultation on Consortia/VSA's

The GSF appreciates there is currently broad regulatory agreement on the treatment of traditional shipping operational arrangements, such as consortia and vessels sharing agreements (frequently referred to as non-rate making agreements in the Asia-Pacific context). The GSF recognises that these forms of carrier agreement may potentially provide benefits to shippers and carriers in the form of reduced costs and enhanced services, provided that those benefits are shared with shippers and consumers. However, as set out in GSF's recent paper on mega-ships and alliances the market power and concentration issues raised by strategic alliances has raised new issues for competition authorities and regulators. These concerns were sufficient for the Chinese authorities to block the proposed P3 Alliance, and for the U.S. FMC to demand unprecedented monitoring requirements over the potential impact of the P3 agreement on services and price competition for shippers.

The GSF report highlights that the new breed of strategic alliances has significantly reduced service competition for shippers with regard to sailing frequency, schedules, ports of call and capacity. The GSF therefore considers that the time is right for competition authorities and maritime regulators to focus on these important parameters of competition when reviewing competition exemptions for consortia, alliances and vessel sharing agreements.

With four (shortly to be three) main strategic alliances including the world's top 16 carriers controlling the world's main container trades, the GSF believes that while there may be scope for operational efficiencies, strategic alliances and consortia may also take advantage of the excessive opportunities for competition restrictions in key areas of competition such as exchanges of information generally, exchanges of information on capacity, costs, sailing schedules, slow steaming and ports of call. It is for this reason that the GSF believes that consortia and vessels sharing agreements should not automatically benefit from a general or block exemptions from competition laws. At the very least consortia/VSA exemptions should make provision for effective monitoring procedures for such agreements to ensure the presence of effective competition for shippers on key trade routes.

In increasingly concentrated container shipping markets strategic alliances have considerably enhanced market power. As GSF's report on mega-ships and alliances shows the barriers to entry for small and medium sized operators have virtually forced these operators out of the main global trades. All the main strategic alliances have market shares between 30-40%. The GSF therefore believes that consortia/VSA's in this category should be subject to pre-notification prior to implementation and effective monitoring by competition authorities to safeguard competition, in particular service competition which has been considerably reduced by the introduction of mega-ships and strategic alliances on the main trade routes. The GSF considers that traditional vessel sharing agreements with market shares below 30% are unlikely to present competition problems and could be automatically exempted via a block exemption order.

Yours faithfully,

Chris Welsh
Secretary General
Global Shippers Forum
Hermes House
St John's Road
Tunbridge Wells
Kent, TN4 9UZ
United Kingdom

Tel: +44 (0)1892 552384
Mob: +44 (0)7818 450556
Email: globalshippersforum.com