

International Chamber of Shipping

38 St Mary Axe London EC3A 8BH

Tel +44 20 7090 1460

Fax +44 20 7090 1484

info@ics-shipping.org www.ics-shipping.org www.shipping-facts.com



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

REPRESENTATIONS ON CASE BE/0004

FOLLOW-UP COMMENTS BY INTERNATIONAL CHAMBER OF SHIPPING (ICS)

General Remarks

1. ICS is the principal international trade association for shipowners, representing all sectors and trades including containership operators. ICS membership comprises 37 national shipowners' associations from Asia, the Americas and Europe, including the Hong Kong Shipowners' Association. The Asian Shipowners' Association is our regional partner.
2. ICS welcomes the tentative decision by the Competition Commission to exempt Vessel Sharing Agreements (VSAs) in its proposed Block Exemption Order (BEO). However, the global shipping industry is disappointed and concerned by the Commission's current intention not to exempt Voluntary Discussion Agreements (VDAs).
3. ICS acknowledges the carefully prepared arguments contained in the Commission's Statement of Preliminary Views. However, we suggest these may not properly address the wider and potentially serious impacts of prohibiting VDAs in trades calling at Hong Kong, or the need for a far more cautious approach during what can now only be described as a period of deep uncertainty and crisis throughout the global container shipping industry.
4. The Commission states it is not currently convinced about all of the efficiencies delivered by VDAs. However, ICS suggests that the Commission, on the basis of its own arguments, has not disproved the strong case put forward by the Applicant that VDAs achieve a number of efficiencies which benefit shippers, consumers, and the Hong Kong economy as a whole.

5. Hong Kong relies heavily on container shipping services for its ability to participate in international trade. Despite a relatively small population, Hong Kong has historically been one of the world's leading territories in terms of overall port traffic. Its importers and exporters currently have access to a large number of major shipping lines calling at Hong Kong offering hundreds of services to other countries worldwide.
6. VDAs have existed in Hong Kong for decades. During this current period of great economic uncertainty, the Commission needs to be absolutely sure that Hong Kong's position as a premier transshipment hub will not be unwittingly damaged by failure to maintain the status quo treatment of VDAs through a lack of exemption, along with the extensive service options that are currently available to Hong Kong exporters and importers and to the wider Hong Kong economy.
7. ICS therefore suggests it would be prudent for the Commission to grant a BEO for VDAs, perhaps until at least 2020, while continuing to keep its position under review.

Impact on Hong Kong as a Transshipment Port

8. We suggest that the Statement of Preliminary Views gives too much emphasis to the supposed benefits (which the global industry disputes) of the European Union (EU) prohibition of liner conferences in 2008, as opposed to the potentially damaging impacts of adopting a competition regime at variance to that which applies under the jurisdictions of Hong Kong's more immediate neighbours, not to mention other important trading partners such as the United States.
9. This is particularly important given that the success of Hong Kong as a premier transshipment centre depends on maritime trade with its Asia Pacific partners. The regime governing trade between Europe and Hong Kong will not be affected by the granting of a BEO for VDAs. However, trade with Hong Kong's neighbours (and adjacent customers) in the Asia Pacific will almost certainly be affected.
10. Unlike ports whose hinterland is the destination for the cargo, the decision by shipping lines to use Hong Kong as a transshipment centre is discretionary.
11. The Commission may be correct that other factors influence decisions by shipping lines regarding the transshipment hubs at which they choose to call. However, the fact remains that if Hong Kong should choose to adopt a competition regime at variance with those of its neighbours, this would introduce legal uncertainty for the carriers' prevailing business model and will only exacerbate the current decline of Hong Kong as a premier regional hub.
12. Hong Kong is already losing cargo to mainland Chinese ports, and has been for several years. It is also widely expected that the Chinese Government will continue to open up its cabotage trades to non-Chinese shipping (including to

shipping lines which are not owned in China) reducing one of the competitive advantages Hong Kong currently enjoys as a transshipment port.

13. Many shipping lines are already finding that it is increasingly more cost effective and efficient to use mainland ports for transshipment. The refusal to extend a BEO to VDAs could therefore be the factor that 'tips the balance' when shipping lines make future decisions about which transshipment centres to use.
14. If even a small number of shipping lines no longer include Hong Kong in their schedule of port calls, this will mean that domestic businesses will not have the same connectivity to destinations worldwide that results from Hong Kong being a major transshipment centre.

Need for Conformity with other Asian Pacific Jurisdictions

15. ICS reiterates that the various maritime competition rules that apply in the Asia Pacific region are currently in broad alignment. Granting a BEO for VDAs would be fully consistent with the 'APEC Guidelines Related to Liner Shipping' which affirm that "the special character of shipping as an international activity creates a need for the coordination and harmonisation of shipping policies." APEC also recognises that global trade is dependent on scheduled liner shipping services that offer the widest possible geographical coverage at the highest level of efficiency and that "exemptions and exceptions from a competition driven regulatory framework may be necessary and these will be implemented in a way that minimises economic distortions, giving consideration to those principles."
16. The Statement of Preliminary Views mentions the recent decision taken by Japan to maintain the status quo with respect to competition law applicable to VDAs. The fact remains that the status quo still prevails in Japan. This is precisely because of the wider policy implications of changing the application of competition rules to shipping, as acknowledged by APEC.
17. Bearing in mind the comments above concerning Hong Kong's continuing future as a leading transshipment centre, the position in Singapore, which continues to permit VDAs, should also not be overlooked (Singapore's economy is roughly the same size as Hong Kong's and whose status as a key transshipment hub in Asia also resembles Hong Kong's).

Benefits of VDAs

18. Having studied the Statement of Preliminary Views, particularly paragraphs 4.77 to 4.118, we suggest that the Commission may not have given sufficient consideration to the efficiency benefits of VDAs with respect to the smooth functioning of the market as a whole, especially in the longer term, and for the maintenance of an industry that is economically sustainable.

19. A container shipping industry which is economically unsustainable is not in the interests of customers or the wider economy, as demonstrated by the recent collapse of Hanjin Shipping, which has created huge disruption throughout the global supply chain.
20. We also suggest that too much emphasis has been given to analysing the benefits of discussions about 'benchmark' rates as opposed to the benefits of facilitating discussions between shipping lines about market trends and longer term developments.
21. Given that a large container ship has a typical new-build cost of around US\$100 million and normal lifespan of about 25 years, and the danger of significant overcapacity undermining long term sustainability, VDAs permit vital discussions between carriers about market trends and data.
22. Importantly, this encourages informed and responsible decision-making in order to maximise the efficiency of the service which the lines provide to their customers. In the interest of market stability and long term economic sustainability, this includes making informed decisions with respect to ordering new ships and recycling redundant tonnage.
23. VDAs also encourage competition by smaller shipping lines since they have improved access to information (which can otherwise give the larger lines a disproportionate advantage), improving the overall service options for customers.

Other Remarks

24. There is a correlation between the extensive over-ordering of very large containerships, for use on East-West trades, and the EU prohibition of liner conferences in 2008. This may be hard to prove definitively. But it is equally hard to prove that the inability of lines participating in EU trades to discuss industry trends and developments has not contributed to the significant over capacity that now exists, undermining the long term economic sustainability of the entire sector. (This significant over-ordering occurred subsequent to the 2008/2009 downturn when maritime trade was increasing again.)
25. The Commission states that it is unconvinced – despite studies by the US Federal Maritime Commission – that the EU prohibition of liner conferences has added to freight rate volatility. The Commission says that this additional volatility may have been due to the impact of the 2009 downturn. However, this would not explain why the volatility was greater on EU trades to the US than non-EU trades to the US. ICS contends that it has equally not been demonstrated that a ban on VDAs in trades to Hong Kong would have no impact on volatility, and that the Commission should therefore consider a more cautious approach before arriving at a final decision.
26. We also note that the Commission appears sceptical as to whether reducing freight rate volatility actually constitutes an efficiency benefit. The real issue, however, is the extent, scale and frequency of the volatility. If freight costs

vary significantly over a short period of time, this makes cost planning very difficult for customers, especially with respect to high volume low value cargoes, with negative impacts for wider economic activity.

27. The Commission also appears to suggest that VDAs result in artificially high rates above market levels. Setting aside that all VDA guidelines are purely voluntary and non-binding, all of the available evidence shows that freight rates in VDA trades have been at all-time low levels for several years, and that carriers in this time have collectively lost millions of dollars. Despite these very poor economic conditions, VDAs have at least helped carriers moderate prolonged depressed rates. Without these important agreements, the long-term impact on competition could be devastating.
28. It should be noted that the now-outdated 2002 OECD report, which is cited by the Commission several times, was not adopted by OECD Member States and, controversially, was published by the Secretariat only, without achieving consensus amongst OECD governments.

Conclusion

29. ICS recognises that the Commission is taking a robust and thorough approach in order to determine if a BEO for VDAs is appropriate.
30. However, it should be remembered that the shipping industry is not seeking anything new, just the maintenance of the status quo which has prevailed in Hong Kong for many years, and which still prevails in most other jurisdictions in the Asia Pacific region that use Hong Kong as a transshipment port.
31. Given that the Commission does not seem to have established unequivocally that a BEO for VDAs is not warranted, and taking account of the wider policy impacts, the numerous efficiencies resulting from VDAs, and the economic uncertainty that currently prevails throughout the container shipping industry, ICS suggests that the Commission considers adopting a far more cautious approach, maintaining the status quo by concluding that a BEO for VDAs will indeed be an appropriate response to the current situation.
32. ICS hopes these remarks are helpful, and is grateful for this opportunity to submit further comments.