



THE HONG KONG SHIPOWNERS ASSOCIATION LTD.

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

By e-mail : consultation@compcomm.hk

14 December 2016

Dear Sirs,

Proposed block exemption orders for liner shipping agreements

We refer to our submission dated 23 March 2016, and take this opportunity to comment on the Commission's Draft Block Exemption Order (BEO) on the application made by the Hong Kong Liner Shipping Association for a BEO under Section 15 of the Competition Ordinance in respect of certain liner shipping agreements.

The Hong Kong Shipowners Association (HKSOA) welcomes and supports the tentative decision to exempt Vessel Sharing Agreements (VSAs), but is very concerned by the Commission's current intention not to exempt Voluntary Discussion Agreements (VDAs).

We understand that, as a matter of principle, the Competition Ordinance is designed to protect consumers and customers in Hong Kong, as evidenced by the preamble of the Ordinance, which states that it is an Ordinance "to prohibit conduct that prevents, restricts or distorts competition in Hong Kong". The Ordinance should, therefore, be applied to protect consumers and customers who are in Hong Kong. There would not appear to be an obligation, under the Ordinance, either stated or implied, to protect consumers and customers who are not in Hong Kong.

The Statement of Preliminary Views notes that 69% of container throughput was transshipment, neither originating from nor destined for consumers or customers in Hong Kong. Furthermore, the remaining 31% was direct cargo, including cargo subsequently or initially transported by road into or out of the Mainland of China¹. It is clear, therefore, that the vast majority of consumers or customers for cargo that passes through the port are not in Hong Kong. These consumers and customers are located elsewhere, not in Hong Kong.

¹ Paragraph 2.21 of the Statement of Preliminary Views

Hence, there must be an element of doubt as to whether the Competition Ordinance should apply to transshipment cargo or cargo that is exported from or imported into the Mainland, and we would request the Commission to comment further on this particular point.

HKSOA firmly believes that Hong Kong's economy must be globally competitive, whether in finance, logistics or maritime. All along, Hong Kong has adopted the principle of free trade and minimal regulation in order to achieve such global competitiveness. It makes no sense to adopt any regulations that threaten Hong Kong's global competitiveness, and absolutely no sense to adopt regulations that would apply to consumers and customers who are not in Hong Kong.

Also, it is just not possible, and would be wrong, to compare legislation that has been adopted in other regions or places that are major importers and exporters to regions or places that exist solely because they act as an intermediary transshipment point.

For this reason, Hong Kong needs to adopt the international norms. Singapore has taken the correct tack, as it has well recognised its role as an intermediary transshipment point. Hong Kong should do the same, and permit block exemption for VSAs and VDAs so as not to upset its global competitiveness as a transshipment point, and the jobs and economic benefit that flow from such trade.

We note that the Commission considers that VDAs have little to do with transshipment *per se*.² This, in HKSOA's view, is taking the wrong tack. VDAs have everything to do with Hong Kong being globally competitive as a transshipment port. Without VDAs, Hong Kong will not be able to compete with other transshipment ports that allow VSAs and VDAs. VSAs and VDAs should go together, as they are complimentary and support each other's functions.

In addition, the dual combination of VSAs and VDAs will assist Hong Kong's intention to be the super-connector for the Belt and Road initiative.

For these reasons, we urge the Commission to confirm the exemption decision on VSAs and to reassess its preliminary decision on VDAs.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Sandy Chan', with a long horizontal flourish extending to the right.

Sandy Chan
Managing Director

² Paragraph 4.116 of the Statement of Preliminary Views