

## Representations on Case BE/00004

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14<sup>th</sup> December 2016

(By Email: consultation@compcomm.hk)

The Commissioner  
Competition Commission  
Room 3601, 36/F  
Wu Chung House  
213 Queen's Road East  
Wanchai, Hong Kong

Dear Sir,

### **Representations on Case BE/00004**

#### **Notice issued under section 16 of the Competition Ordinance of a proposed block exemption order for certain liner shipping agreements**

In respect of the above notice issued on 14<sup>th</sup> September 2016, we, the Chartered Institute of Logistics and Transport in Hong Kong (CILTHK), are pleased to submit the below representation to the Competition Commission.

#### ***Vessel Sharing Agreements (VSAs)***

##### **1. Whether VSAs give rise to the efficiencies mentioned in the Statement of Preliminary Views. ("Statement" per CASE BE/0004 on compcomm.hk website)**

Ø The quantification of the efficiencies in terms of port coverage and sailing frequency to be gained via VSA is sufficient in its validation purpose.

##### **2. Whether customers receive a fair share of these efficiencies**

Ø The VSA re-alignments triggered by the fillings for bankruptcy protection of Hanjin Shipping. Since 31 August 2016, including the confirmed Ocean Alliance, the planned 3 x Japanese Lines Alliance, will buttress the continuation of liner shipping with service choices to customers. The benefits would not be realisable

without the VSA arrangements.

**3. Whether any restrictions on competition arising from VSAs are indispensable to achieve the relevant efficiencies.**

Ø Restricting the total market share level, in capacity terms, of the VSAs will serve to avert the development of monopoly in the industry. In reference is the condition of maximum 40% pursuant to the proposed BOE (Block Exemption Order) by the HK Liner Shipping Association. And it will be beneficial to have a periodic review mechanism to monitor compliance.

**4. Whether VSAs allow parties to such agreements the possibility to eliminate competition.**

Ø The self-imposed restrictive mechanism mentioned in sub 3) above will disallow VSAs to eliminate competition.

Ø The introduction of an institutional mechanism to safeguard against possible abuse is recommended.

**5. Whether assuming the Commission is satisfied that the relevant activities of VSAs meet the terms of the efficiency exclusion, the Commission should exercise its power under section 15 of the Ordinance to issue a block exemption order for VSAs**

Ø Yes.

***Voluntary Discussion Agreements (VDAs)***

**6. Whether VDAs give rise to the efficiencies put forward by the Applicant**

Ø In principle communication on market situation and freight rate movements provides transparency and valuable reference for carriers to formulate pricing policies that do not result in freight rate's "spikes and troughs" witnessed in the past few years. The rate instability resulting from the "spikes and troughs" did not benefit customers economically.

**7. In the event that the response to issue 6 is in the affirmative, whether VDAs would meet the other three conditions of the efficiency exclusion**

Ø It is debatable whether VDAs would meet the other 3 conditions of the efficiency exclusion, assuming the assertion of sub 6) is valid.

***Proposed Order***

**8. The terms of the Proposed Order, including the scope of the agreements which will benefit from the Proposed Order and the conditions which must be fulfilled to benefit from the Proposed Order**

Ø Agree

***Proposed transitional arrangements***

**9. The proposed transitional arrangements in respect of VDAs and VSAs which do not benefit from the Proposed Order**

Ø The proposed transitional arrangements of a "grace period" for both VDAs and VSAs of 6 months from the date of the Commission's final decision on the BEO application are sufficient.

We hope that you would give due consideration to our views in your way forward.

Yours sincerely,

Tsang Wing Hang

President

The Chartered Institute of Logistics and Transport in Hong Kong