



PROPOSED RECOMMENDATION FOR THE BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS

A CCCS Consultation

27 May 2024

FOREWORD

Introduction

1. The Competition and Consumer Commission of Singapore (“**CCCS**”) is conducting a review of the current Competition (Block Exemption for Liner Shipping Agreements) Order (the “**LSA BEO**”) made by the Minister for Trade and Industry (“**Min/T&I**”) under section 36 of the Competition Act 2004 (“the **Competition Act**”). The current LSA BEO expires on 31 December 2024. CCCS now seeks comments and views on its proposed recommendation to the Min/T&I in relation to the LSA BEO.
2. This document includes an annex which provides an overview of the proposed recommendation, the possible impact of the proposed recommendation on the Singapore economy as well as guiding questions for interested parties to consider and respond to.

Responding to this Consultation

3. CCCS welcomes responses to this consultation from any interested party. Persons responding to the consultation should indicate any organisation(s) or interest(s) they represent.
4. The consultation period begins on 27 May 2024 and ends on 17 June 2024.
5. Please submit your response by way of the Public Consultation Feedback Form which can be accessed via the following [link](#). Alternatively, you may submit your response via email to CCCS_consultation@cccs.gov.sg (indicating “Public Consultation on LSA BEO 2024” as the subject title of your email).
6. We suggest that any responses sent to us via email be in the form of an attachment, organised in the following manner:
 - (i) Cover page
 - (ii) Table of contents
 - (iii) Statement of interest

- (iv) Summary of major points
 - (v) Comments and responses to questions
 - (vi) Conclusion
7. All responses should be clearly and concisely written and should provide a reasoned explanation for any views on CCCS's proposed recommendation. Where relevant, respondents should identify the specific paragraph of the consultation paper to which they are providing comments and views. Any supporting material should be included as an attachment.
 8. Respondents may request that any part of their response believed to be confidential or commercially sensitive be kept confidential. Any such information should be clearly marked.

Next Steps

9. Following this consultation, CCCS will review the responses provided before making its recommendation to the Min/T&I, prior to the expiry of the current LSA BEO.

PROPOSED RECOMMENDATION FOR THE BLOCK EXEMPTION ORDER FOR LINER SHIPPING AGREEMENTS

Background

1. Section 34 of the Competition Act prohibits anti-competitive agreements.¹ However, the Min/T&I can make an order under section 36 of the Competition Act, following a recommendation of the CCCS, to exempt certain categories of agreements from section 34. This is known as a “block exemption”. A block exemption is granted on the basis that a category of agreements is likely to fulfil the net economic benefit criteria set out in section 41 of the Competition Act (“**section 41 criteria**”); namely, that the agreements which come within that category contribute to:
 - a. improving production or distribution, or
 - b. promoting technical or economic progress, and
 - i. do not impose on the undertakings² concerned restrictions which are not indispensable to the attainment of such objectives, and
 - ii. do not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.
2. At present, the only block exemption in Singapore is the LSA BEO, which pertains to liner shipping agreements (“**LSAs**”). LSAs are agreements between two or more liner operators (“**liners**”) whereby liners agree to co-operate in respect of one or more of the following: (a) technical, operational or commercial arrangements, (b) price, or (c) remuneration terms for liner shipping services. Liner shipping services refer to the transport of goods on a regular basis on any particular route between ports and in accordance with timetables and sailing dates advertised in advance and made available, even on an occasional basis, by a liner operator to any transport user against payment, including any inland carriage of goods occurring as part of through transport.³
3. The LSA BEO was first introduced in 2006 and subsequently renewed in 2010, 2015, 2020 and 2021. The current LSA BEO expires on 31 December 2024.

¹ Section 34 of the Competition Act prohibits agreements, decisions of an association of undertakings and concerted practices that have the object or effect of preventing, restricting or distorting competition in Singapore.

² An undertaking means any person, being an individual, a body corporate, an unincorporated body of persons or any other entity, capable of carrying on commercial or economic activities relating to goods or services.

³ Through transport is defined as continuous transportation by a combination of sea and inland carriage from a point of origin to a destination: (a) which is undertaken by a liner operator; (b) which is performed by the liner operator undertaking the transportation – (i) on its own; (ii) partly on its own and partly through one or more other carriers; or (iii) through one or more other carriers, at least one of which is a liner operator; and (c) for which a single amount is charged by the liner operator undertaking the transportation.

4. The two broad categories of LSAs covered by the LSA BEO are **vessel sharing agreements (“VSAs”) for liner shipping services** and **price discussion agreements (“PDAs”) for feeder services**. For the purposes of the LSA BEO:
 - a. VSAs refer to agreements between two or more liner operators pursuant to which the parties to the agreement agree on operational arrangements relating to the provision of liner shipping services, including the coordination or joint operation of vessel services, and the exchange or charter of vessel space. VSAs include consortia, slot exchange agreements, slot charter agreements, joint service agreements, slot swap agreements and “alliances” or “strategic alliances”. Liners refer to both main lines and feeders. In general, main lines operate larger vessels that sail over longer distances that may not be able to call at smaller ports. Feeders provide liner shipping services to main line customers by providing space on the feeders’ vessels for the containers (and cargoes) of main lines, usually on regional trade routes between Singapore and ports where main lines do not serve (e.g., main lines operate larger vessels that may not be able to call at smaller ports).
 - b. PDAs refer to agreements between two or more liner operators pursuant to which the parties to the agreement discuss commercial arrangements relating to the provision of liner shipping services, including prices and remuneration terms offered to third parties. Only PDAs for the provision of feeder services fall under the scope of the LSA BEO.
5. To benefit from the LSA BEO, LSAs must:⁴
 - a. allow member liners to have individual confidential service arrangements;
 - b. allow member liners to withdraw from the agreement upon giving an agreed period of notice without financial or other penalty;
 - c. not require mandatory adherence to a tariff; and
 - d. not require the disclosure of confidential information concerning service arrangements.

Summary of CCCS’s Proposed Recommendation

6. In assessing whether to recommend a block exemption order for LSAs beyond 31 December 2024, CCCS considers whether LSAs are likely to generate net economic benefit based on the section 41 criteria. CCCS gathered and reviewed information on recent and upcoming market developments in the liner shipping industry as well as the current international regulatory landscape with respect to LSAs to arrive at the current assessment and proposed recommendation.

⁴ Paragraph 5(1) of the LSA BEO.

7. CCCS's current assessment is that the following LSAs generate net economic benefit for Singapore and CCCS thus proposes to recommend for these LSAs to continue to be the subject of the LSA BEO for five years from 1 January 2025 to 31 December 2029:
 - a. **VSAs for liner shipping services;** and
 - b. **PDA for feeder services.**
8. CCCS is also seeking feedback to understand the current and impending usage of LSAs involving "inland carriage of goods" occurring as part of "through transport".

CCCS's Assessment and Proposed Recommendation

9. The following sub-sections explain CCCS's net economic benefit assessment that underpins the proposed recommendation for the LSA BEO.

Proposed Recommendation 1: VSAs for liner shipping services satisfy the criteria for block exemption

VSAs improve production or distribution, or promote technical or economic progress

10. VSAs improve the global connectivity of Singapore's ports and thus support Singapore's transshipment hub. By facilitating the sharing of vessels among liners, VSAs increase the utilisation of space on vessels and allow liners to operate at a lower cost than if each liner were to operate on its own. This enables the provision of more frequent services in and out of Singapore across more trade routes. The enhanced connectivity and concentration of liner shipping services available in Singapore generate considerable benefits to Singapore, both directly and indirectly, including providing a higher degree of connectivity and more service choices for Singapore's importers and exporters.
11. VSAs bring about environmental benefits. As such agreements enable liners to share and utilise vessels more effectively, liners can deploy larger and more efficient vessels that are more environmentally friendly (i.e., less emission on a per TEU basis).
12. VSAs also enhance competition among liners. Through the use of such agreements, smaller liners can provide services on trade routes and at frequencies which they would otherwise not be able to provide on their own due to lack of scale. Thus, such agreements lower barriers to entry for smaller liners to compete with larger liners or another alliance of liners.
13. Therefore, VSAs contribute to improving the production of liner shipping services in Singapore. Having legal certainty for such agreements under the LSA BEO is also expected to generate economic benefits for Singapore as it would support long-term investment decisions made by liners.

VSAs do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of economic benefits

14. The potential restrictions on competition arising from VSAs are necessary to achieve the efficiencies outlined above. The various aspects of VSAs which may potentially be

considered to restrict competition – such as the exchange of slots, pooling of resources, the joint operation of a service and the exchange of information on capacity and other operational matters – are directly related to the operation of the VSAs. The absence of such restrictions is expected to eliminate or greatly reduce the efficiencies that flow from the VSAs.

15. Further, the LSA BEO conditions (as elaborated at paragraph 5 above) ensure that the restrictions within VSAs are maintained at the level necessary for attaining the possible economic benefits and limiting the extent of behaviour that liners can engage in.
16. Considering the above, VSAs allowed under the LSA BEO do not impose restrictions that are not indispensable to the attainment of economic benefits for Singapore.

VSAs do not eliminate competition in respect of a substantial part of the goods and services in question

17. Liners in a VSA cooperate on operational arrangements relating to their joint liner shipping service (e.g., scheduling or ports of call) but continue to independently make their own commercial decisions on prices charged to customers. Despite being in a VSA, liners compete with one another in the VSA (and those outside) in order to sell their allocated space in the shared vessel to customers.
18. During CCCS’s review, a concern was raised as to blank sailings⁵ having increased and become more ad hoc, and that liners in VSAs could be coordinating capacity to “artificially” blank sailings, resulting in higher spot prices and/or difficulty for customers to secure liner shipping services. However, overall, the evidence does not appear to suggest that VSAs have resulted in blank sailings or reduced capacities to the detriment of customers. As noted above, liners compete to sell their allocated space, such that liners are unlikely to have the incentive to artificially blank sailings as they would lose revenue (while still incurring fixed costs) and generally have to bear the cost of alternative arrangements (e.g., for their contracted customers). It was highlighted to CCCS that there may be significant delays in liner shipping services due to events beyond liners’ control which may result in vessels missing their original schedules because of diversions or port calls being cancelled in order for the vessels to catch up on their sailing schedules. CCCS also noted that container freight rates⁶ have fallen and normalised from the peak during the Covid-19 pandemic.
19. On balance, VSAs within the scope of the LSA BEO are unlikely to eliminate competition in a substantial part of liner shipping services.

VSAs for liner shipping services satisfy the criteria for block exemption

20. CCCS’s current assessment is that all the necessary conditions set out in the section 41 criteria for a block exemption for VSAs for liner shipping services are satisfied.

⁵ Blank sailing refers to the cancellation of an entire scheduled sailing route or the skipping of certain port(s) along the sailing route for reasons such as low demand over certain periods (e.g., Chinese New Year holiday in China). The industry may also refer to the skipping of certain port(s) due to significant delays from unforeseen circumstances as vessel “sliding”.

⁶ Container freight rates refer to the charges levied by a liner for moving containers between ports.

Proposed Recommendation 2: PDAs for feeder services satisfy the criteria for block exemption

PDAs for feeder services improve production or distribution, or promote technical or economic progress

21. Some feeders consider that PDAs remain relevant for their business. Feeders may engage in price discussions among themselves, such as discussing the recommended surcharges (e.g., fuel surcharge) charged to their main line customers, to facilitate cost recovery and improve their position in commercial negotiations with main line customers.
22. Being able to participate in PDAs for feeder services attracts feeders to base their headquarters and operations in Singapore and connect their services through Singapore. Feeders, in turn, attract and anchor main lines to Singapore, thus expanding Singapore's shipping network to support its transshipment hub. The network of liners and trade routes arising from the concentration of main lines and feeders available in Singapore generates considerable benefits to Singapore, both directly and indirectly, including providing a higher degree of connectivity and more service choices for Singapore's importers and exporters.
23. In consideration of the above, CCCS is of the view that PDAs for feeder services on balance improve the production of liner shipping services and the distribution of goods in Singapore. Having legal certainty for such agreements under the LSA BEO is also expected to generate economic benefits for Singapore as it supports long-term investment decisions made by feeders.

PDAs for feeder services do not impose on the undertakings concerned restrictions which are not indispensable to the attainment of economic benefits

24. The LSA BEO conditions ensure that restrictions under the PDAs are maintained at the level necessary for attaining possible economic benefits and limiting the extent of restrictions on competition. The LSA BEO conditions require that PDAs for feeder services allow parties to have individual confidential service arrangements with their customers and to withdraw from the agreement without penalty. In addition, the PDAs for feeder services cannot impose obligations on parties to adhere to agreed or recommended prices or disclose confidential information on their service arrangements.
25. Considering the above, PDAs for feeder services allowed under the LSA BEO do not impose restrictions that are not indispensable to the attainment of economic benefits for Singapore.

PDAs for feeder services do not eliminate competition in respect of a substantial part of the goods and services in question

26. As noted at paragraph 5, for a PDA for feeder services to be exempted under the LSA BEO, it has to comply with conditions that such agreements allow individual private contracting and cannot impose obligations on parties to adhere to the agreed or recommended prices or disclose confidential information on service arrangements.

Individual private contracting remains a common practice in the industry. The rates that feeders will charge their main line customers, including surcharges, are subject to bilateral negotiations between feeders and their main line customers.

27. The anti-competitive effects from the use of such PDAs for feeder services appear to be limited. Surcharges imposed by feeders are still subject to negotiation with main lines which are likely to possess bargaining power due to their size. Moreover, main lines may increasingly be able to exert competitive pressure on the feeders, as there appears to be a trend for main lines to operate their own feeder services. Main lines could be motivated to operate more feeder services should the prices which are offered by (common) feeders be less competitive due to the price discussions.
28. In this regard, the LSA BEO for PDAs for feeder services is unlikely to eliminate competition in a substantial part of feeder services.

PDAs for feeder services satisfy the criteria for block exemption

29. CCCS's current assessment is that all the necessary conditions set out in the section 41 criteria for a block exemption order for PDAs for feeder services are satisfied.

Proposed Recommendation 3: Renewal of the LSA BEO for five years from 1 January 2025 to 31 December 2029

30. The proposed renewal of the LSA BEO by five years provides legal certainty to the industry and allows industry players to plan for the longer term. For liners, this provides continuity for them to carry on their commercial activities and creates a conducive environment as they plan their long-term investments. For customers, this creates more stability in the network of liners which in turn offers more choices to support customers' needs. The duration also supports the industry in meeting its obligations to achieve decarbonisation of the maritime sector, thereby ensuring that the LSA BEO continues to remain relevant and current to the liner shipping industry.

Request for feedback on usage of LSAs involving sea transport and "inland carriage of goods"

31. CCCS has received feedback from freight forwarders indicating an unlevel playing field as liners enjoy competition law immunity with respect to "inland carriage of goods"⁷ (occurring as part of "through transport"), while freight forwarders do not. This is of concern as freight forwarders compete with liners which are increasingly providing end-to-end supply chain solutions (including inland carriage of goods such as truck or rail haulage) to their customers.
32. Liners that CCCS engaged have, however, indicated that they currently do not engage in operational cooperation or price discussion on any "inland carriage of goods" component of liner shipping services.
33. To ascertain the current local and impending practices on cooperation between liners on "inland carriage of goods", CCCS is seeking feedback on (a) the current and impending

⁷ Examples of "inland carriage of goods" include the use of truck or rail haulage to transport goods on land.

usage of LSAs involving sea transport and “inland carriage of goods” occurring as part of “through transport”; and (b) the potential economic benefits and concerns that may arise from such LSAs. The feedback received will enable CCCS to assess the relevance of the current scope of “liner shipping services” in the LSA BEO.

Consultation Questions

34. CCCS is inviting comments on the proposed recommendation for the LSA BEO at paragraph **Error! Reference source not found.** and the usage of LSAs at paragraph 8. The following questions highlight the key issues which CCCS is seeking feedback on. Respondents may wish to organise their submissions according to the issues set out below.
- a. What are your views on the proposal to renew the LSA BEO in respect of VSAs?
 - b. What are your views on the proposal to renew the LSA BEO in respect of PDAs for feeder services?
 - c. What are your views on the proposed period of renewal of the LSA BEO (i.e., a renewal of five years until 31 December 2029)?
 - d. What is the current and impending usage of LSAs involving “inland carriage of goods” occurring as part of “through transport”? What are the potential economic benefit and concerns that may arise from such LSAs?

Public Consultation Feedback Form

Please click [here](#) to access the link to the feedback form.