

MEDIA RELEASE

6 December 2005

The Competition Commission recommends Block Exemptions for Liner Agreements in the Maritime Industry

1. The Competition Commission of Singapore (CCS) will be recommending to the Minister for Trade and Industry to exempt¹ categories of scheduled international cargo liner agreements (or “liner agreements” in short) from section 34² of the Competition Act 2004. The block exemption orders are targeted to be finalised by July 2006, and will take retrospective effect from 1 January 2006.

Liner Agreements

2. The block exemptions will cover consortium, conference and discussion agreements³. These agreements have historically been granted a degree of immunity by competition authorities in many jurisdictions, including the European Union⁴, the United States, Australia and Japan. While the European Commission (EC) and Australia are undertaking a review of their exemptions for liner agreements⁵, the current immunity for these agreements remains in place pending the final outcome of their reviews.

3. The CCS recognises that Singapore, being part of the global shipping network, has to be mindful of the regulatory environment in which different stakeholders in the shipping industry operate. After considering the nature of the shipping trade, international developments, Singapore’s market context as well as inputs from the shipping lines and shippers, the CCS is of the view that block exemptions will create a similar regulatory environment for shipping lines as in many parts of the world, and give certainty to the local shipping industry. The CCS thus recommends the following:

- (a) A block exemption of up to 2010 for consortium agreements. This is because such agreements are generally considered to have net economic benefits; and
- (b) A block exemption for an initial unspecified period for conference and discussion agreements. However, this will be subject to review by CCS⁶ in the light of developments in the local and international maritime industry.

4. The block exemption orders will contain conditions or obligations⁷ for the shipping lines to comply in order for their agreements to enjoy the immunity. Following this announcement, the CCS will commission a consultancy study to formulate the specific scope and conditions of the block exemption orders that are relevant to Singapore’s context, with inputs from relevant parties. The consultant will take into account the role of Singapore’s port as a

transshipment hub, which may require differences in drafting from the text used in other jurisdictions' block exemptions.

5. The proposed block exemptions are targeted to be released for public consultation in the later part of March 2006. After assessing the comments received, the CCS will then make a recommendation to the Minister of Trade and Industry to issue the block exemption orders by July 2006.

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About the Competition Commission of Singapore

The CCS is a statutory body established under the Competition Act 2004 on 1 January 2005 to administer and enforce the Act. Its mission is to promote healthy competitive markets that will benefit the Singapore economy based on sound economic principles applied objectively and consistently. For more information, visit www.ccs.gov.sg.

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Notes to Editor

(1) Section 36 of the Act empowers the CCS to make a recommendation to the Minister of Trade and Industry to make block exemption orders to exempt certain categories of agreements which meet certain criteria from the section 34 prohibitions on anti-competitive agreements. The criteria for block exemption are spelt out in section 41 of the Act¹. The shipping lines will still be subject to the section 47 prohibition on the abuse of dominant position.

(2) Under section 34 of the Competition Act 2004 ('Act'), agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the appreciable prevention, restriction or distortion of competition within Singapore are prohibited unless they are excluded or exempted.

(3) Types of Liner Agreements:

Conference: A conference is a route-specific agreement between carriers to set freight rate indicators, engage in capacity discussion, and possibly pool revenue, costs and profits. Conferences also set out the schedule of sailing, ports of call and other minimum service levels.

Discussion agreement: A discussion agreement (or stabilisation agreement) provides a forum for carriers to discuss and share information relevant to the route; for example, demand and supply forecasts or the introduction of capacity. Discussion agreements can also include route-specific but non-binding agreements between carriers on mutual issues, such as the level of capacity, type and amount of cargo carried, or 'recommended' freight rates. Discussion agreements often involve both conference and non-conference carriers within a particular route. These agreements mainly exist in the US and Australia trade routes.

Consortium: A consortium typically involves cooperation among different carriers of their operating services by means of technical, operational or commercial coordination. Their scope can vary from a simple slot chartering or vessel sharing arrangement to more extensive operational agreements that include such things as managing port installations and marketing activities. The EC makes a distinction between conference and consortium agreements on the basis that the latter do not contain provisions for the setting of common freight rates.

(4) In the European Union, consortium, conference and discussion agreements are granted block exemptions from the equivalent of our section 34 prohibition. The EC has recently renewed the block exemption of consortium up to 2010.

(5) The EC is in the process of reviewing the block exemption for conference and discussion agreements. Although the EC's preliminary view is that exemption of conference and discussion agreements should be phased out in due course, the current block exemption for these agreements remains in place pending the final outcome of its review. Australia is similarly undertaking a review of its exemption for liner agreements.

¹ The criteria are agreements which contribute to improving production or distribution, or promoting technical or economic progress, where restrictions to competition are indispensable to the agreements and do not afford the undertakings concerned the possibility of eliminating competition in the goods or services in question.

(6) Under Section 40 of the Act, the CCS may make a recommendation to the Minister of Trade and Industry to vary or revoke a block exemption order, where appropriate.

(7) The block exemption orders will contain conditions or obligations which the agreements or undertakings to the agreements must satisfy. A breach of these conditions or a failure to comply with an obligation could result in automatic cancellation of the block exemption to the agreement. If the CCS considers that a particular agreement does not meet the criteria in section 41, it may cancel the block exemption in respect of that agreement.