

Notice of Commission initial consultation regarding the review of the Competition (Block Exemption For Vessel Sharing Agreements) Order 2017

Background

On 8 August 2017, the Competition Commission (“**Commission**”) issued the Competition (Block Exemption For Vessel Sharing Agreements) Order 2017 (“**Order**”).

The Order declares that certain activities of vessel sharing agreements¹ between liner shipping companies are excluded agreements for the purposes of section 15 of the Competition Ordinance (Cap. 619) (“**Ordinance**”),² which means that the first conduct rule in section 6 of the Ordinance does not apply to such activities.

The Order, including an accompanying Guidance Note regarding its terms, and other reference materials, are available on the Block Exemption Orders Register on the Commission’s website: [here](#).

Review of the Order

The Order is due to expire on 8 August 2022. It specifies that the Commission shall commence a review of the Order no later than 8 August 2021 (“**Review**”).

¹ Under the Order, “vessel sharing agreement” is defined to mean an agreement or a set of interrelated agreements between liner operators in which the parties to such agreement or agreements discuss and 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.

² The relevant activities referred to in the Order are as follows:

(a) the joint operation of liner shipping services including any of the following activities: (i) the coordination and/or joint fixing of sailing timetables and the determination of ports of call; (ii) the exchange, sale or cross-chartering of space or slots on vessels; (iii) the pooling of vessels and/or port installations; (iv) the use of one or more joint operations offices; (v) the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment;

(b) capacity adjustments in response to fluctuations in supply and demand, which may be necessary for the operation of a joint service;

(c) the joint operation or use of port terminals and related services;

(d) any other activity ancillary to those referred to in (a), (b) or (c) above and which is necessary for their implementation.

The Review will inform the Commission's decision on whether to renew the Order, renew the Order subject to amendments, or let the Order expire. In making that decision, the Commission will consider among other things whether the basis on which the Order was issued remains satisfied (i.e., that VSAs within the scope of the Order give rise to efficiencies such that they satisfy the efficiency exclusion in section 1 of Schedule 1 to the Ordinance). During the Review, the Commission will focus upon any developments since the issuance of the Order.

Initial consultation stage of the Review

Public consultation will form an important part of the Review. By the present notice, the Commission invites interested parties to provide information, views and evidence in an initial consultation, which will assist the Commission in formulating a proposal on the future of the Order.

Interested parties are requested to address the items below and provide available supporting evidence where possible.

Parties should send their written responses to the Commission by email at (applications@compcomm.hk). The Commission's case number (BE/0004) should be quoted in the subject line of the email. This consultation will close at **6 p.m. on 4 November 2021**.

Market developments

- (1) What have been the major developments in the liner shipping industry since the issuance of the Order? For example, with regard to general market conditions, prices, service levels, the state of competition and the level of cooperation among shipping lines.
- (2) What have been the impacts of the COVID-19 pandemic on the liner shipping industry? If so, how long do you expect that any such impacts will last?
- (3) To the extent not already addressed in (1) and (2), have there been any developments since the issuance of the Order that have taken place in the economy of Hong Kong or in the economy of any place outside Hong Kong that affect VSAs?

Competition concerns and efficiencies

- (4) Have there been any changes with respect to the competition concerns to which vessel sharing agreements may give rise since the issuance of the Order? In this respect, the Commission previously found that VSAs could potentially give rise to:
- (a) reductions in service variety;
 - (b) capacity restrictions (where parties to the VSA had market power); and
 - (c) sharing of competitively sensitive information.³
- (5) Have there been any changes with respect to the economic efficiencies and resulting benefits to consumers in Hong Kong to which vessel sharing agreements may give rise since the issuance of the Order? In this respect, the Commission previously found that VSAs could give rise to:
- (a) broader service coverage and higher service frequency than if shipping lines were operating alone;
 - (b) cost efficiencies for shipping lines through use of larger vessels; and
 - (c) decreased costs of entry and expansion for shipping lines on particular trade routes.⁴
- (6) With respect to the competition concerns and efficiencies addressed in (4) and (5), are there any differences in the situation before and during the COVID-19 pandemic? If so, please identify those differences.

Effectiveness of the Order

- (7) Does the Order continue to be merited and effective? In your response, please address:
- (a) the desirability of maintaining a stable and predictable regulatory environment in relation to competition for liner shipping; and

³ For further details of these competition concerns, see the Statement of Reasons issued by the Commission with the Order, available [here](#) (“**Statement of Reasons**”), paragraphs 4.7 to 4.13.

⁴ For further details of these efficiencies, see Statement of Reasons, paragraphs 4.22 to 4.55.

- (b) the likely effects if the Order were allowed to expire.
- (8) Have there been any material changes in the forms or terms of VSAs since the issuance of the Order?⁵

Market share limit

- (9) Have there been any changes in the market which would impact the appropriateness of the market share limit since the issuance of the Order?
- (10) In the context of intra-regional trades (for example, the intra-Asia trade), have there been any changes which suggest the market share limit should be applied by reference to a particular point-to-point route on the trade instead of by reference to the trade as a whole?⁶

Other matters

- (11) Please provide any further information, views or evidence you consider may assist the Commission in formulating a proposal on the future of the Order.

Subsequent stages of the Review

After considering the information, views and evidence collected from this initial consultation, the Commission will publish a proposal on whether to renew the Order, renew the Order subject to amendments, or let the Order expire on 8 August 2022.

The Commission will then seek representations on the proposal, and make a final decision on the future of the Order prior to 8 August 2022.

⁵ For further details on the forms and terms of VSAs at the time of the Order, see Statement of Reasons, paragraphs 2.27 to 2.30.

⁶ See further the Guidance Note accompanying the Order, available [here](#), paragraphs 20 to 21.