

8 August 2017

Competition Commission issues block exemption order for vessel sharing agreements in the liner shipping industry

The Competition Commission (Commission) today (8 August 2017) issued a block exemption order (BEO) under section 15 of the Competition Ordinance (Ordinance) for vessel sharing agreements (VSAs) between liner shipping companies, *the Competition (Block Exemption for Vessel Sharing Agreements) Order 2017* (Order).

The Commission has issued the Order in response to an application for a BEO from the Hong Kong Liner Shipping Association (HKLSA), which was submitted to the Commission in December 2015 (Application). The Commission has also published a Statement of Reasons, which sets out the reasons for the Commission's decision in relation to the Application.

In the Application, the HKLSA sought a BEO covering both VSAs and voluntary discussion agreements (VDAs). VSAs (which include consortia, slot exchange agreements, joint service agreements and alliances) are agreements between shipping lines on certain operational arrangements. VDAs are agreements pursuant to which shipping lines discuss certain commercial matters relating to particular shipping routes.

The Commission has decided to issue the Order in light of its assessment of the economic efficiencies generated by VSAs.

The Order declares that activities usually undertaken pursuant to VSAs are excluded from the application of the First Conduct Rule in the Ordinance subject to certain conditions, which include the following:

- The parties to the VSA do not collectively exceed a market share limit of 40%;
- The VSA does not authorise or require shipping lines to engage in cartel conduct; and
- Shipping lines are free to withdraw from the VSA without incurring a penalty on giving a reasonable period of notice.

The duration of the Order is five years. The Commission proposes to review the Order four years from its commencement date, but in any event may review the Order at any time it considers appropriate (subject to section 19(3) of the Ordinance).

The Commission has decided not to issue a BEO for VDAs or the revised VDA scope which was proposed by the HKLSA in a supplementary submission to the Commission, on the basis that it was not demonstrated that the relevant VDA activities meet the terms of efficiency exclusion.

The Commission has, however, provided certain guidance in its Statement of Reasons as to which VDA activities may give rise to competition concerns, and which would be unlikely to contravene the Ordinance.

The Commission will apply transitional arrangements, in the form of a grace period of six months which will end on 8 February 2018, for parties to (i) any VSAs which do not benefit from the Order, and (ii) VDAs, so as to allow such parties to make any changes they may consider necessary to their commercial arrangements.

Prior to issuing the Order, the Commission published a proposed BEO for VSAs in September 2016 and sought representations from interested parties in accordance with section 16 of the Ordinance. The Commission also published a Statement of Preliminary Views setting out its preliminary views in relation to the Application. The Commission has considered the 15 representations received, which were submitted by both local and international entities including industry bodies and associations, container terminal operators, maritime industry practitioners, a legislator, academics and the HKLSA itself.

Following the conclusion of the section 16 consultation, the HKLSA provided the Commission with a supplementary submission, in which it requested the Commission to consider issuing a BEO for a revised VDA scope. The Commission published the supplementary submission on its website and invited comments from interested parties in March 2017.

In reaching its decision on the Application, the Commission has taken account of the submissions from the HKLSA and all of the parties which participated in the various consultations held by the Commission.

In addition to the Order and the Statement of Reasons, the Commission has published a Guidance Note which provides an explanation of the provisions of the Order. All of these documents are available in English and Chinese on the Commission's website at www.compcomm.hk.
