



The Hong Kong
Shippers'
Council
香港付貨人委員會

Unfair to give liners special privileges



Willy Lin
Chairman

I must object to the granting of a block exemption order to shipping lines' co-operative agreements (Liners Agreements), applied by the Hong Kong Liner Shipping Association (HKLSA) on behalf of international shipping lines to the Competition Commission on December 17, 2015.

Shipping lines are seeking a wide scope of exemptions from application of Hong Kong competition laws, which range from vessel and slot sharing, vessel operations, technical co-operation to commercial issues, including discussing, recommending and publishing guidelines on rates, charges, service contracts, tariff items and other commercial issues.

I really see no reason why special privilege has to be given to the liner industry. There is no major difference, as far as competition considerations are concerned, for the shipping industry from other industries. Shipping lines have attempted to argue that their industry needs special treatment because it is a unique industry characterized by heavy capital commitment, slow return on investment, inelastic capacity with cyclic demand, high fixed operation costs and low barrier of entry and exit. They say, without special protection, they would be unable to provide stable and regular services to shippers.

This is an argument that shipping lines have been using for more than a century, since the beginning of the pricing cartel shipping conferences in the mid-19th century. However, the said characteristics are shared by many other industries nowadays. Actually, its claim of uniqueness was rejected in an Organisation for Economic Co-operation and Development (OECD) report on the liner industry, released in 2002. The report also found no evidence that conferences contribute to market

stability as liners have claimed. The OECD report was an important document for the European Union (EU) in deciding to repeal the exemption granted to shipping conferences in 2006. The repeal led directly to the demise of the Far Eastern Freight Conference, the oldest shipping conference in 2008 after the two-year grace period lapsed.

Although the EU granted exemption to liners' vessel-sharing agreements (VSAs) that deal with vessel and slot sharing, and other types of operational co-operations, it never gave exemption to the voluntary discussion agreements (VDAs) that deal with commercial affairs. HKLSA is applying block exemption in Hong Kong for both types of co-operative agreements.

While The Hong Kong Shippers' Council sees some rationale for VSAs which allow liners to rationalize their fleet size and deployment, terminal and routing operations, and offer better services in terms of network and frequencies, and that these potential benefits might pass down to shippers, there is no benefit for shippers at all for liners to collude on price and charges. Forbidding price fixing, collaboration and collusion are the primary objectives of any competition laws, including those of Hong Kong. HKLSA is asking the Competition Commission to desert this basic principle.

Even though the EU gave exemption to VSAs, the EU set a cap at 30% of the market. If any shipping consortia or alliances dominate a market, there

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is a high potential that the consortia or alliances would dictate rates, or set rules that discourage competition. The dominance would deter new entry of competitors and shippers suffer as a result. This is why market concentration is another important measuring stick for competition.

Also, even for VSAs, it is not free from worry that shipping lines could jointly manage capacity, i.e., manipulate supply in the market. Therefore, even though VSAs are allowed, regulatory authorities are keeping a close watch to prevent abuse, and penalizing heavily if any such behavior is found.

Unlike Europe, VDAs in general are allowed in the United States. However, the US has a different regulatory regime over the maritime industry. A high-powered statutory body, known as the Federal Maritime Commission (FMC), has been set up to regulate the industry. The FMC is established by Congress and empowered to request data and reports, including confidential ones, from stakeholders including individual shipping lines and consortia and alliances. The FMC also establishes filing rules and performance bonds, initiates and implements investigations, reports to Congress and may bring the shipping lines, VDAs and alliances to court in case of violation.

Violation of competition laws is a serious offence in these economies. In Europe, the maximum financial penalty is 10% of a company's annual global sales revenue.

The persons responsible for committing the crime are subject to imprisonment. Several senior airlines executives are still in jail as a result of convictions for price fixing a few years ago.

In Mainland China, the application of P3 consisting of Maersk, MSC and MCA-CGM to operate was rejected by the Ministry of Commerce two years ago because of the concern of over market concentration. And as late as December 28, 2015, eight roll on roll off shipping lines were fined RMB407million because of price collusion. The amount is equivalent to 4 to 9% of the shipping lines' turnover.

HKLSA said that block exemptions exist across Pacific Rim jurisdictions. This is definitely a misleading statement. The US and Mainland China have been enforcing their regimes in different ways. The Australian authority is at the final stage of reviewing the block exemption. Indeed, the Review Panel in its report in March 2015 recommended repeal of the block exemption. In New Zealand, the Productivity Commission, which is assigned the task of reviewing the block exemption, recommends the removal of exemptions in its final report of April 2012. The Israeli Parliament repealed the exemption of liner shipping in 2010.

While the Singapore authority has extended the block exemption for five years to December 2020, it is definitely not the norm.

Shipping lines attempted to back up their

demand by threatening to desert Hong Kong if no block exemption is granted. Nothing is more resentful than this. Hong Kong shippers have been supporting shipping liners, allowing shipping lines to grow and prosper in the past decades, and shipping lines are not paying the least attention to shippers' well-being.

When the majority of world's economies are not granting block exemptions, I cannot understand why shipping lines in Hong Kong are failing to fall in line.

I must emphasize that the prime objective of the Competition Commission is to create a pro-competition business environment for Hong Kong. There is no other authority, or statutory body in Hong Kong to safeguard the interests of shippers – users of liner services. Hong Kong shippers have been unfairly paying the world's highest Terminal Handling Charges for years and the long list of charges that shippers are required to pay is almost endless. Users of liner shipping services are dominated by SMEs that hardly have any bargaining power vis-à-vis the powerful shipping groups. This is why shippers welcome the Competition Ordinance that has been long awaited.

I would urge the Competition Commission not to grant the block exemption demanded by the liners. The Council has submitted an objection and is mobilizing other user groups to achieve this common goal.

Finally, as the New Year starts, I would like to wish all shippers a better year ahead in 2016!