



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



Willy Lin  
Chairman

## Uncompetitive behaviour must be discouraged to safeguard shippers'

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The Competition Commission started a 3-month public consultation for a proposed block exemption order for certain liner shipping agreements on September 14, 2016. The Commission proposed to grant a conditional block exemption order for certain liners' Vessel Sharing Agreements (VSAs) and no exemption order for liners' Voluntary Discussion Agreements (VDAs). The Commission gave a full delineation of the rationale of the proposal based on cost-economic efficiency analysis, as block exemption order applications must be reviewed, according to specific guidelines. Thus, the Commission will make a final decision, after reviewing and considering the representations received.

I fully support the Commission's proposal of not granting any block exemption order for VDAs, as they allow liners to discuss and propose collective pricing actions, and important commercial issues like capacity management. Liners through VDAs announced pricing actions such as General Rate Increase (GRI), minimum freight levels, service contract guidelines, capacity withdrawal, action implementation dates, etc.; these kinds of actions are entirely uncompetitive in nature and should not be allowed. The refusal to grant exemption is especially important for a small economy like Hong Kong, which has no statutory body in place to monitor liners' behaviour and market situation like the Federal Maritime Commission in the United States.

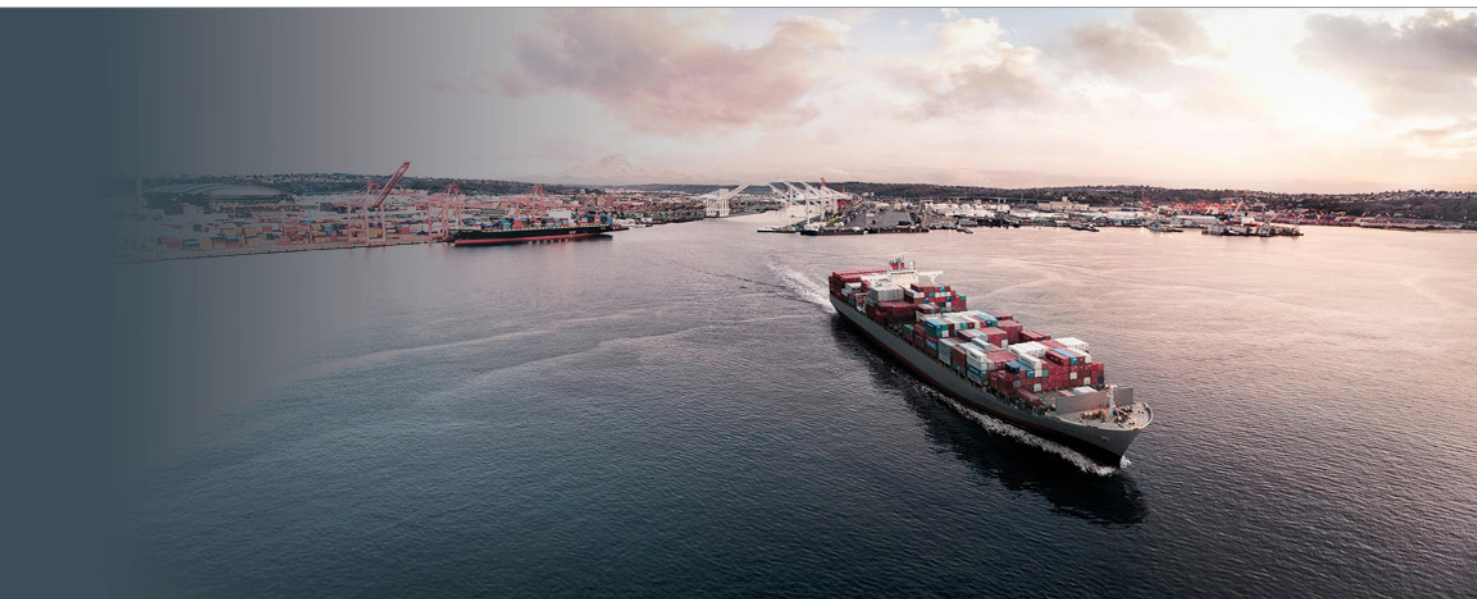
While I recognise that VSAs may generate

some economic efficiencies like lower operating costs from economic of scale, shippers could enjoy the benefit only when there is sufficient competition among liners. We need to understand that VSAs allow liners to manage capacity, market exit and entry, suppliers and service providers, as well as the products and services that are offered to clients. Members of the same alliance will not compete in routing, scheduling, network, vessel speed, port choice, and even the terminal operator used. With the demise of Hanjin Shipping and the latest merger-and-acquisition, shipping lines have already begun regrouping themselves, meaning shippers essentially will be left with only three alliances to choose from. Shippers could never be happy with this kind of situation. Therefore, the setting of a market cap for each alliance is necessary. The proposed 40 per cent cap is already very generous, bearing in mind that a maximum of 45 per cent is allowed for two consecutive years as a built-in flexibility.

I must also point out that some of the claimed economic efficiencies could be theoretical only. A shipping line need not enter a new market because another alliance member's vessels are making calls elsewhere. Market development entails substantial investment and commitment and the single fact of service coverage by alliance members' vessels would not be a sufficient condition.

I would also like to stress that VSAs could potentially drive out small non-alliance carriers. The overwhelming majority of





shipping lines bankrupted in the past 10 years were non-alliance member lines such as Lykes Line in October 1995; Cho Yang in May 2001; Kien Hung in May 2004; Shandong Yantai in August 2008; Dongnama Shipping in October 2008; Grand China Shipping in April 2013 and so on. Perhaps the only exception is Hanjin Shipping, which is a member of the CKYHE Alliance and on course for declaring bankruptcy. Therefore, the harm of VSAs to competition, manifested in driving out competing liners, should not be understated.

In light of Hanjin Shipping's bankruptcy, I must emphasise that many shippers, even those outside of Hanjin, have suffered very seriously from its demise. Shipment schedules were disrupted and cargo failed to arrive in time, or arrive at

all. Containers were discharged at foreign ports and shippers were desperate to discover the whereabouts of their cargo and arrangements for on-forwarding. Inbound shippers were blackmailed by terminal operators and had to pay huge ransomed amounts to receive their cargo. Damage has spread far and wide and multiplied because of the VSA arrangements. Not only did Hanjin Shipping's clients suffer, but clients shipping with other alliance member lines suffered too. The bigger the VSAs, the greater potential damage will be.

Some stakeholders tend to compare the proposed scheme with that of Singapore, and claimed that Singapore has a more relaxed scheme. Again, I must point out that it is more relevant to compare Hong Kong with the European Union (EU) and Mainland China, as these economies are

much bigger and are significant business partners for Hong Kong. Additionally, both the EU and Mainland China have more stringent regulatory regimes than the proposed one. Moreover, the Singaporean government through its investment arm has vested interest in terminals and shipping lines. The interest positions perhaps underlay the difference between the Singaporean and the Hong Kong approach as the latter emphasises mainly on platform and infrastructure building.

The Commission proposed to review the block exemption order five years after the order is granted; I consider that a reasonable arrangement.

Thank you for reading and I wish all of you a very happy and successful 2017!

