



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

## ■ CHAIRMAN' S MESSAGE

# Gearing up to a more open and competitive environment

Shippers are paying keen attention to recent investigations of several international freight forwarding companies in the US, Europe and Asia. The investigations, according to media reports, are believed to revolve around air cargo rates and fuel surcharge fixing. The investigations have been going on for two years and indeed, it is still fresh in shippers' memory, when several airlines came under scrutiny both in the EU and in the US, and were ordered to pay hefty fines for violating anti-competition laws. The European Commission said it "has reason to believe the companies concerned may have violated (EU) rules that outlaw restrictive business practices."



Willy Lin, Chairman

The investigations are believed to focus on surcharges, especially the fuel surcharge, levied by the freight forwarders. The investigations by the EU Commission and US Department of Justice (DOJ) into alleged anti-competitive activities with the air cargo industry has included over 10 airlines, international freight forwarders and express carriers such as UPS and FedEx. The EU Commission is coordinating the investigations with other foreign competition authorities, and in some cases, subpoenas have been issued. In the case of British Airways and Korean Air Lines, the DOJ has handed down a ruling and the two airlines have each agreed to plead guilty and each pay US\$300 million "criminal fines for their roles in conspiracies to fix the prices of passenger and cargo flights," announced the Department of Justice. Separately, Lufthansa agreed to pay US\$85 million to settle 80 class-action lawsuits in the US in a price-fixing inquiry revolving around its air cargo unit.

The fate of other airlines still under investigation is uncertain as to whether they would be required to pay hefty fines or whether freight forwarders will face a similar fate. But perhaps, as a result, in Hong Kong, airlines are filing slightly different Bunker Adjustment Factors now. Shippers should check the Council website [www.hkshippers.org.hk](http://www.hkshippers.org.hk) to find out whether they have been correctly charged. Airlines are now individually filing slightly different fuel surcharges and shippers should not only check the rate differences, but for the effective dates as well to make sure they pay the correct surcharge on the

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specified date of cargo transport.

The message from the authorities is clear – collective pricing disrupts the proper functioning of the market and should not be allowed. Virtually, the same principle should also be applied on the sea freight front. Shipping lines, because of historical reasons, have been very much protected up to this day. It was only in September last year that the EU decided it was time to remove the immunity from application of the competition law for shipping conferences – a typical price-setting cartel type of organisation, with a two-year grace period before the shipping conferences must cease to function.

In certain countries, such as Singapore, even though the anti-competition

law was only lately erected, shipping conferences are still granted immunity. However, as competition has now become the basis for the proper functioning of an economy, such immunity should dissolve before long.

It is known that Hong Kong's own competition law is at its final stages of drafting. With all our major business partners – the EU, the US and even Mainland China – having established competition laws, it is inevitable for Hong Kong to come up with its own in the soonest possible time. Hong Kong shippers have long been suffering from shipping lines' collective pricing on surcharges, especially Terminal Handling Charges, and we are hoping that the competition law would provide an effective tool to crack their hold on THCs.

In addition, with low fuel prices now part of a bygone era and never to be seen again, the industry should adopt a new approach on fuel-related surcharges. A 'surcharge' should be allowed to cater for an unforeseen or emergency situation only. When the fuel price stabilizes, even if they are at higher levels than the past, the related surcharges such as the Bunker Adjustment Factor (BAF), Bunker Surcharges, Fuel Surcharges, should be incorporated into freight rates and become something negotiable between shippers and shipping lines, according to the market supply-and-demand situation. At present, the BAF in the Hong Kong-to-Europe westbound trade exceeds US\$400, typically reflecting the absurdity of the current situation.

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