



Singapore National Shippers' Council  
新加坡全国货主理事会

04 June 2015

Mr Toh Han Li  
Chief Executive  
Competition Commission of Singapore

Dear Mr Toh,

We note with disappointment CCS's decision to recommend to the Minister that the block exemption for liner shipping agreements be extended for another five years till 31 December 2020 in its current form. Unlike the CCS we believe that exempting liner shipping from the Singapore Competition Act is not only damaging to the trading community but also to Singapore.

In the attached document, we put on record our objections on the proposed recommendation, and we urge CCS to take these objections into consideration before it makes its recommendation to the Minister.

Yours sincerely,

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George Chew  
President



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## Expression of interest

As the sole representative of Singapore shippers, the SNSC acts on the community's behalf, championing their cause in shipping and trade. Maritime regulatory reform is foremost in the Council's agenda, as members have experienced at first hand the adverse effects of collusion amongst shipping lines on shippers and on Singapore. Through working with government agencies, businesses and the global shippers' community, we are hoping to bring about change in a system which until now is weighted against us.

### **1. What are your views on the proposal to extend the block exemption, in its current form, for another five years?**

The block exemption order (BEO), which exempts liner shipping agreements from Section 34 of the Singapore Competition Act, has given shipping lines government-sanctioned right to collude to fix rates and surcharges. At the SNSC we had fought against its inclusion in the Competition Act in 2006. We did not believe it was necessary then, we are even more convinced it is not necessary now given significant changes in the regulatory, shipping and trading environment.

#### **• Changing regulatory environment**

One of the reasons Competition Commission of Singapore gave for extending the BEO for a further five years is that exemption for liner shipping is still the regulatory norm (15.d.). We beg to differ.

Over the past 10 years countries with competition laws are slowly but steadily chipping away at the special treatment accorded to liner shipping as detailed analysis has shown that liner shipping is not so different from other sectors to warrant anti-trust exemption. Neither is there convincing evidence that anti-trust immunity for price-fixing and freight rate discussions offer more benefits than costs to shippers.

In 2006, the Europe Union (EU) repealed Regulation 4056/86, which exempted container lines from the EU Competition Law. The repeal, which was unanimously adopted by all 25 member states, took effect two years later in October 2008. With the repeal, the term 'conference' is no longer in use.

New Zealand is repealing antitrust exemption for maritime pricing and discussion agreements following a detailed two-year inquiry. Amendments to the New Zealand Commerce Bill are presently awaiting enactment by the New Zealand parliament.

Australia may do likewise if a review of Australia's competition laws by the four-member Competition Policy Review Panel chaired by Professor Ian Harper is accepted. In the March 31 report, the panel recommended sweeping changes aimed at improving the country's competitive position, including the repeal of block exemptions for liner shipping provided under Part X of the Competition and Consumer Act.

- **Changing liner shipping environment**

Over the last couple of years, we have seen the emergence of a worrying trend - the emergence of mega alliances. While alliances, consortia and vessel sharing agreements have been an integral part of liner shipping, the mega alliances we see today differ from the predecessors in scale and scope.

In terms of size, they are far bigger than their predecessors. The 16 leading container carriers in four alliances command 95% of the major trade routes.<sup>1</sup> The aborted P3 Network which was envisaged by three of the largest players - Maersk, Mediterranean Shipping Company (MSC) and CMA GMA - would have comprised 252 ships commanding 24% of the transpacific, 40-42% of the transatlantic and 42% the Asia-Europe trades. This is unprecedented in the history of the liner industry!

The alliances are growing ever bigger. In July, Japan's Mitsui OSK Lines (MOL) will join 2M (Maersk Line and MSC) on the Asia to East Coast of South America trade. We can expect similar developments going forward, as the driving force for the current consolidation – overcapacity – is expected to remain for years to come.

According to Boston Consulting Group, there are currently around 300 newbuildings in the orderbook, including 70 of the biggest container ships in the 13,000 to 18,000 plus TEU range. To reach equilibrium by 2019, 50% of the current orderbook needs to disappear. Instead more ships are still being ordered.

In his Singapore Maritime Lecture 2015, Orient Overseas International's Chief Executive CC Tung likened this to a container ship arms race fed by ego and ready availability of finance.



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Maersk, the world's largest container carrier, is leading the pack. This June, the Danish company ordered eleven 19,630-TEU vessels, plus options for six further ships. Valued at US\$1.8 billion, it is the second new-building order this year and is part of its investment programme. Maersk's plans is to invest US\$3 billion a year for up to five years to order ships with a combined capacity of 425,000 TEUs for delivery between 2017 and 2019.

As more ships are being phased into an over-saturated market, we anticipate that consolidation will result. Through mergers and acquisitions, there will be fewer but bigger players working within mega alliances.

The implications of such unmatched market concentration are frightening, not just for shippers but for the larger community. Shipping lines will be in a position to dictate rates and surcharges, as well as terms for providing their service. For a service so vital to international trade it is a position that we should all do well to prevent.

Maritime regulators in China, the EU and the US share our concern. In 2013, China vetoed the P3 Network as it considered it a de-facto merger, putting an end, for now, on the broadest, boldest alliance in the liner industry.

The new EC's Commissioner for Competition Margrethe Vestager saw the need for close scrutiny of the liner industry<sup>2</sup>, while the US Federal Maritime Commission's Commissioner Richard Lidinsky saw a need for a "global regulatory approach" to serve as a counterweight to the size and power of the global carrier alliances<sup>3</sup>.

Given the global nature of these mega alliances, the three regulators held a summit in Washington in December 2013 to consider the evolving international maritime landscape, their differing regulatory frameworks and the potential effects of carrier cooperation on international trade. A second summit will be held on June 18.

- **Impending change in trading environment**

Trade is the lifeblood of Singapore. At 2.5 times its Gross Domestic Product (GDP), Singapore's trade in goods is amongst the highest in the world.

We can expect trading volumes to increase in the foreseeable future as two significant developments in this region unfold - the formation of ASEAN Economic Community (AEC) in December 2015 and China's grand One Belt One Road project.

Under the AEC blueprint, it is envisaged that 10-member ASEAN will be a fully integrated economic community that will allow a free flow of goods, services, skilled labour and investment, and a freer flow of capital.



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ASEAN has a combined population of 600 million people and a GDP of US\$2.4 *trillion* in 2013. As a market, ASEAN's market size will be rivalled only by China with its 1.4 billion people and India with its 1.3 billion people. With a labour force of some 300 million people, ASEAN is a sizeable production base, which can replace China as the world's manufacturing powerhouse.

The One Belt One Road is a development strategy started by China in 2013 to further integrate itself into the world economy. It refers to the New Silk Road Economic Belt, which will link China with Europe through Central and Western Asia, and the 21st Century Maritime Silk Road, which will connect China with Southeast Asian countries, Africa and Europe.

These two developments bode well for Singapore, a key transport node in Asia and its biggest transshipment hub. For Singapore to reap the full benefits, it has to ensure that it is cost competitive.

As liner shipping cost is an integral part of this equation, we need to do our levelled best to ensure that the container freight rates are price competitive. In our view, freight rates will surely go up if shipping lines are allowed protection under the law to collaborate to fix rates and surcharges. By removing the BEO and extending free market principles to liner shipping, we are helping to secure Singapore's position as a key maritime node in this vast and dynamic region.

**2. What are your views on the impact of the proposed block exemption on your business — would you say it has a positive, negative, or neutral impact? Why?**

The impact of the proposed BEO on shippers is negative.

Singapore is a trade dependent country and the bulk of its trade is shipped by sea. By enabling lines to meet and discuss, the BEO accords undue market power to the shipping lines to artificially shore up rates and impose surcharges.

While the downsides are apparent, having the BEO has not provided any obvious upside. It has not led to more stable freight rates or more reliable shipping services.

**3. Do you have any other comments on the proposals on the block exemption?**

Four reasons were given for the inclusion of the BEO in the Competition Act (15. a.b.c.d.) Except for the last, the reasons given suggest that Singapore's future as a leading container port and maritime centre hinges on the BEO. The supposition is that by extending the BEO,



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Singapore will continue to be a favoured port of call for container carriers, strengthening its position as a premier maritime hub and a trading centre. But this supposition is not in sync with facts on the grounds.

Container carriers call at the Singapore port because of its handling efficiency, price competitiveness and good connectivity, not because of the BEO. This has become even more important with the advent of mega carriers. As container ships scale up to over 20,000-TEU capacity in companies' ongoing drive to improve efficiency and reduce operational costs, these ultra large container carriers can only call at select ports which have the capacity, draught and handling capability. This will increase the need for transshipment and for Singapore, the world's biggest container transshipment hub.

It was a point noted by Mr C C Tung in his Singapore lecture: "If Singapore is actually looking into the future and thinking that the big ships are here to stay, then its transshipment could be the key to its future...Relatively speaking, no other country, or no other neighbouring port, is actually contemplating investing or trying to catch up."<sup>4</sup>

Conversely, the removal of the BEO from the Competition Act will help to promote Singapore's trade. At over 2.5 times, Singapore has one of the biggest trade-to-GDP ratios in the world. Home to the vast majority of the world's largest commodity trading companies, which generate US\$1.3 trillion in annual turnover, Singapore is well-placed to expand its role as a major global trading hub.<sup>5</sup>

The liner shipping industry has always tried to make a case that it is different and requires special protection or privileges. But studies have shown it is not all that different to other global industries. Just because the industry has enjoyed protection in the past, it is not a birth right that cannot be removed.

#### **Footnote**

<sup>1</sup>The four super alliances are:

- 2M - Maersk Line and MSC
- Oceans Three Alliance -CMA CGM, United Arab Shipping Co (UASC) and China Shipping
- CKYHE Alliance – Cosco, K Line, Yang Ming, Hanjin and Evergreen
- G6 – APL, Hapag-Lloyd, Hyundai Merchant Marine, Mitsui OSK Nippon Yusen Kaisha and Orient Overseas Container Line



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<sup>2</sup> Shipping Watch, Dec 22, 2014

EU's new Commissioner for Competition, Margrethe Vestager: "The commission will continue to monitor developments in the container industry and will scrutinise every concern relating to interference with competition that the commission discovers on its own or which is reported. It goes without saying that the commission is in frequent contact with players - carriers, customers, ports, etc - and I'm sure that they won't hesitate to notify us about cases that interfere with competition which they feel need to be investigated further."

<sup>3</sup> Speech of Commissioner Richard A. Lidinsky, Jr. 20th Annual European Maritime Law Organization Conference November 7, 2014: "I am not opposed to alliances --- even voting for two of them --- but I believe to offset and balance this new "carrier globalism" we need the counterweight of "regulatory globalism."

<sup>4</sup> 'No containing' Singapore's shipping capacity, The Straits Times, 23 Apr 2015

<sup>5</sup> Mr Lim Hng Kiang, Minister for Trade and Industry, at the 2015 Global Trader Dialogue, 12 May 2015, "Under the Gaze: The New Stage of Global Trading"