

Consultation on Proposed Extension of Block Exemption Order for Certain Liner Shipping Agreements to 31 Dec 2029

Introduction

The Competition and Consumer Commission of Singapore ("**CCCS**") is seeking public feedback on its proposed recommendation to the Deputy Prime Minister and Minister for Trade and Industry to renew the Competition (Block Exemption for Liner Shipping Agreements) Order ("**LSA BEO**") for five years from 1 January 2025 to 31 December 2029. The LSA BEO would apply to the following Liner Shipping Agreements ("**LSAs**"):

- Vessel sharing agreements ("**VSAs**") for liner shipping services; and
- Price discussion agreements ("**PDAs**") for feeder services.

The LSA BEO exempts the prescribed categories of LSAs from the prohibition under section 34 of the Competition Act 2004 against anti-competitive agreements, subject to certain conditions and obligations. This is on the basis that such LSAs would generate net economic benefit for Singapore.

CCCS is seeking feedback on the possible impact of the extension of the LSA BEO on the Singapore economy, in particular on players in the maritime industry. In addition, CCCS is seeking feedback on the current and impending usage of LSAs which involve inland carriage of goods occurring as part of through transport. Through transport refers to the continuous transportation by a combination of sea and inland carriage from a point of origin to a destination.

CCCS will make a recommendation on the LSA BEO to the Deputy Prime Minister and Minister for Trade and Industry after it has considered the written submissions received. The closing date for submissions is 17 June 2024.

This Update highlights the key features of CCCS' proposed recommendation to extend the LSA BEO.

Background

Section 34 of the Competition Act 2004 prohibits agreements, decisions and concerted practices that have the object or effect of preventing, restricting or distorting competition in Singapore. However, the Minister for Trade and Industry can make a block exemption order, following the recommendation of CCCS, to exempt categories of agreements from section 34 if it contributes to the net economic benefit of the country.

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The LSA BEO was first put in place in 2006 and is the only block exemption order in force in Singapore. It has been extended several times, with various amendments lodged over time. The current LSA BEO, which expires on 31 December 2024, exempts certain types of LSAs from section 34, subject to prescribed conditions and obligations.

Liner shipping services refer to the sea transport of goods on a regular basis between ports, including any inland carriage of goods (e.g. truck or rail haulage) occurring as part of through transport. LSAs are agreements between two or more liner operators whereby the parties agree to co-operate in respect of one or more of the following:

- Technical, operational or commercial arrangements;
- Price; or
- Remuneration terms for liner shipping services.

The categories of LSAs covered under the current LSA BEO are:

- **VSA for liner shipping services** – Agreements between two or more liner operators on operational arrangements relating to the provision of liner shipping services (including the coordination or joint operation of vessel services, and the exchange or charter of vessel space) which do not include discussions on price to customers.

VSAs apply to both main lines and feeders. Main lines operate larger vessels that may not be able to call at smaller ports, while feeders provide liner shipping services to main line customers by providing space on the feeder's vessels for the containers (and cargos) of main lines.

- **PDA for feeder services** – Agreements between two or more feeders discussing prices (e.g. fuel surcharges) commercial arrangements relating to the provision of feeder services to their main line customers.

To fall within the scope of the LSA BEO, an LSA must also fulfil the following conditions:

- Allows member liners to have individual confidential service arrangements;
- Allows member liners to withdraw from the agreement upon giving an agreed period of notice without financial or other penalty;
- Does not require mandatory adherence to a tariff; and
- Does not require the disclosure of confidential information concerning service arrangements.

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Proposed Recommendation

CCCS has assessed that the LSAs under the current LSA BEO generate net economic benefit for Singapore, and is proposing to recommend that these LSAs continue to be the subject of the LSA BEO for a further five years from 1 January 2025 to 31 December 2029.

CCCS has provided the following explanation on its assessment of net economic benefit of the LSAs under the LSA BEO:

- **VSA for liner shipping services** – VSAs improve the global connectivity of Singapore's port and support Singapore's status as a transshipment hub. They enable the provision of more frequent services in and out of Singapore.

VSAs enhance competition among liners by lowering barriers to entry for smaller liners to provide services on trade routes and at frequencies that they would otherwise not be able to provide on their own due to lack of scale. VSAs also bring about environmental benefits by enabling liners to share, utilise and deploy larger and more efficient vessels that are more environmentally-friendly.

CCCS has assessed the potential restrictions on competition arising from VSAs to be necessary to achieve the efficiencies outlined above. Further, the LSA BEO conditions maintain the necessary restrictions for limiting the extent of behaviour that liners can engage in. CCCS has also assessed that VSAs within the scope of the LSA BEO are unlikely to eliminate competition in a substantial part of liner shipping services.

- **PDA for feeder services** – CCCS has assessed that PDAs for feeder services remain relevant for some feeders' businesses. Feeders may engage in price discussions to facilitate cost recovery and improve their position in commercial negotiations with main line customers. This may attract feeders to base their headquarters and operations in Singapore and connect their services through Singapore, which would then attract and anchor main lines to Singapore, expanding Singapore's shipping network to support its transshipment hub.

CCCS has assessed that the LSA BEO conditions maintain the necessary restrictions for limiting the extent of restrictions on competition, and that the anti-competitive effects from the use of PDAs for feeder services appear to be limited. Firstly, surcharges imposed by feeders on main lines are still subject to commercial negotiation with main lines, which are likely to possess bargaining power. Secondly, main lines may be motivated to operate their own feeder services should the prices offered by (common) feeders be uncompetitive.

As for the duration of the extension of the LSA BEO, CCCS has proposed a period of five years to provide legal certainty to the industry and allows industry players to plan for the longer term.

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- For liners, this provides continuity for commercial activities and establishes a conducive environment for planning long-term investments.
- For customers, this establishes stability in the network of liners, which then offers more choices to support customers' needs.
- The duration also supports the achievement of decarbonisation obligations in the maritime sector.

Importantly, CCCS is now looking to also assess the relevance of LSA BEOs to inland carriage of goods. In particular, some freight forwarders had indicated that there was an uneven playing field between themselves and liners as the latter enjoy competition immunity with respect to "inland carriage of goods" which they do not. However, various liners have countered that they currently do not engage in operational cooperation or price discussion on any "inland carriage of goods" component of their liner shipping services. It appears that CCCS is now considering in a very targeted manner whether the LSA BEO should apply specifically to "inland carriage of goods".

Concluding Words

CCCS is seeking feedback on its proposed recommendation on the LSA BEO. In this regard, CCCS has set out the following questions to highlight the key issues:

- What are your views on the proposal to renew the LSA BEO in respect of VSAs?
- What are your views on the proposal to renew the LSA BEO in respect of PDAs for feeder services?
- What are your views on the proposed period of renewal of the LSA BEO?
- What is the current and impending usage of LSAs involving "inland carriage of goods" occurring as part of "through transport"? What are the potential economic benefits and concerns that may arise from such LSAs?

Stakeholders in the maritime industry, such as main lines, feeders, port operators, freight forwarders, and exporters and importers, may wish to consider the proposed recommendations and the assessment of the net economic benefit of extending the LSA BEO. Should you wish to provide a response to the consultation, please feel free to contact our Competition & Antitrust and Trade lawyers at competitionlaw@rajahtann.com, who will be glad to guide and assist you in the process.

For more information, please click on the following links (available on the CCCS portal at www.cccs.gov.sg):

- [CCCS Consults on Renewing the Block Exemption Order for Liner Shipping Agreements for Five Years](#)
- [Consultation Paper on Proposed Recommendation for the Block Exemption Order for Liner Shipping Agreements](#)

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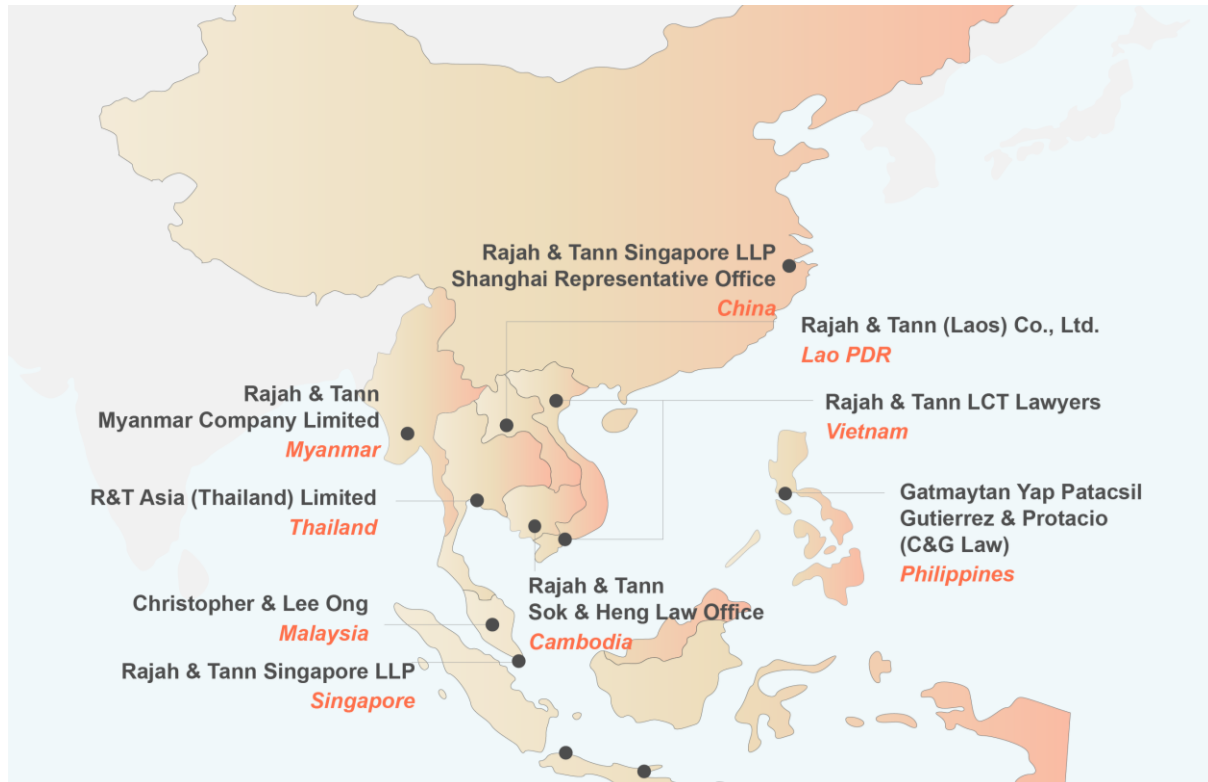
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