
NEWS RELEASE

MyCC GRANTS CONDITIONAL BLOCK EXEMPTION IN RESPECT OF LINER SHIPPING AGREEMENTS FOR ANOTHER TWO YEARS

KUALA LUMPUR, 21 JUNE 2017 – The Malaysia Competition Commission (MyCC) has decided to grant a block exemption for liner shipping agreements in respect of Vessel Sharing Agreements (VSA) and Voluntary Discussion Agreements (VDA) made within Malaysia or which have an effect on liner shipping services in Malaysia subject to the condition that no element of price fixing, price recommendation or tariff imposition by any person on transport users.

The Block Exemption Order (BEO) shall commence on 7 July 2017 for a period of two years or until the same is cancelled by the MyCC. The decision was made upon consideration of the feedback from public, stakeholders of the industry and relevant government ministries over the past 30 days starting from 11 May 2017.

In 2014, the MyCC had granted a three year block exemption for liner shipping agreements which is due to expire on 6 July 2017. The application for the renewal of block exemption for VSA and VDA in respect of liner shipping services was submitted by the Malaysia Shipowners Association (MASA) and the Shipping Association of Malaysia (SAM) on 6 March 2017.

The MyCC in the exercise of the powers conferred by subsection 8(1) of the Competition Act 2010 (“the Act) may grant a block exemption provided all the conditions under section 5 of the Act are satisfied cumulatively:

- (a) There are significant identifiable efficiency benefits arising from the liner shipping agreements;
- (b) The benefits could not reasonably have been provided by the parties to the liner shipping agreement without the agreement having the effect of preventing, restricting or distorting competition;
- (c) The detrimental effect of the liner shipping agreements on competition is proportionate to the benefits provided; and
- (d) The liner shipping agreement does not allow liner operators to eliminate competition completely in respect of a substantial part of the liner shipping services.

The BEO does not exempt or provide immunity in respect of any abuse of a dominant position under the section 10 of the Act. Therefore, parties to a liner shipping agreement can still be found liable for an infringement if they are found abusing their dominant positions in the liner shipping market.

The BEO does not cover inland carriage of goods and warehousing of goods. In addition, the BEO allows liner shipping operators to offer, on the basis of individual confidential contracting, their own service arrangements, upon certain conditions (refer to Annexe A for more details).

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About Malaysia Competition Commission (MyCC)

Established in June 2011, MyCC is an independent body responsible for enforcing the Competition Act 2010, which was implemented to create healthy competition which would in turn stimulate productivity and innovation, thus creating wider choices of products for consumers with better quality and reasonable prices.

The Act applies to all commercial activities undertaken within and outside Malaysia that affect competition in the Malaysian market. It provides a regulatory framework including powers to investigate, adjudicate and impose penalties on the perpetrators of the competition laws. For more information on the Act and the MyCC's activities, log on to www.mycc.gov.my

ANNEXE A

Notes to Editor:

Information on Section 4, 5, 8, 9 and 10 of the Competition Act 2010. Further information on the BEO as per below.

Section 4: Prohibited horizontal and vertical agreement

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.
- (2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—
- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;
 - (b) share market or sources of supply;
 - (c) limit or control—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment; or
 - (d) perform an act of bid rigging, is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.
- (3) Any enterprise which is a party to an agreement which is prohibited under this section shall be liable for infringement of the prohibition.

Section 5: Relief of Liability

5. Notwithstanding section 4, an enterprise which is a party to an agreement may relieve its liability for the infringement of the prohibition under section 4 based on the following reasons:
- (a) there are significant identifiable technological, efficiency or social benefits directly arising from the agreement;
 - (b) the benefits could not reasonably have been provided by the parties to the agreement without the agreement having the effect of preventing, restricting or distorting competition;
 - (c) the detrimental effect of the agreement on competition is proportionate to the benefits provided; and
 - (d) the agreement does not allow the enterprise concerned to eliminate competition completely in respect of a substantial part of the goods or services.

Section 8: Block Exemption

8. (1) If agreements which fall within a particular category of agreements are, in the opinion of the Commission, likely to be agreements to which section 5 applies, the Commission may, by order published in the Gazette, grant an exemption to the particular category of agreements.
- (2) An exemption granted under this section is referred to as a “block exemption”.
- (3) An agreement which falls within a category specified in a block exemption is exempt from the prohibition under section 4.
- (4) The Commission in granting the block exemption may impose any condition or obligation subject to which a block exemption shall have effect.
- (5) A block exemption may provide that—
- (a) if there is a breach of a condition imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from the date of the breach;
 - (b) if there is a failure to comply with an obligation imposed by the block exemption, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement;

- (c) if the Commission considers that a particular agreement is not one to which section 5 applies, the Commission may, by notice in writing, cancel the block exemption in respect of the agreement from such date as the Commission may specify;
- (d) the block exemption shall cease to have effect at the end of a period specified in the order; or
- (e) the block exemption is to have effect from a date earlier than that on which the order is made.

Section 9: Procedure for block exemption

9. The Commission shall, before granting a block exemption –
- (a) publish details of the Commission’s proposed block exemption;
 - (b) give at least thirty days from the date of publication to allow any submission to be made by members of the public in relation to the proposed block exemption; and
 - (c) give due consideration to any submission made.

Section 10: Abuse of dominant position

10. (1) An enterprise is prohibited from engaging, whether independently or collectively, in any conduct which amounts to an abuse of a dominant position in any market for goods or services.
- (2) Without prejudice to the generality of subsection (1), an abuse of a dominant position may include—
- (a) directly or indirectly imposing unfair purchase or selling price or other unfair trading condition on any supplier or customer;
 - (b) limiting or controlling—
 - (i) production;
 - (ii) market outlets or market access;
 - (iii) technical or technological development; or
 - (iv) investment, to the prejudice of consumers;

- (c) refusing to supply to a particular enterprise or group or category of enterprises;
 - (d) applying different conditions to equivalent transactions with other trading parties to an extent that may—
 - (i) discourage new market entry or expansion or investment by an existing competitor;
 - (ii) force from the market or otherwise seriously damage an existing competitor which is no less efficient than the enterprise in a dominant position; or
 - (iii) harm competition in any market in which the dominant enterprise is participating or in any upstream or downstream market;
 - (e) making the conclusion of contract subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contract;
 - (f) any predatory behaviour towards competitors; or
 - (g) buying up a scarce supply of intermediate goods or resources required by a competitor, in circumstances where the enterprise in a dominant position does not have a reasonable commercial justification for buying up the intermediate goods or resources to meet its own needs.
- (3) This section does not prohibit an enterprise in a dominant position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market conduct of a competitor.
- (4) The fact that the market share of any enterprise is above or below any particular level shall not in itself be regarded as conclusive as to whether that enterprise occupies, or does not occupy, a dominant position in that market.

Additional information on the Block Exemption Order (BEO)

1. “Liner shipping services” means any services provided by a liner operator to any transport user upon payment for the containerization of goods and scheduled transport of the containerized goods, or other transport of goods, by an ocean transport on regular basis:
 - (a) though any particular route between ports; and
 - (b) In accordance with timetables and sailing dates which are made available and advertised in advance

But shall not include full vessel chartering arrangements with any transport user such as a tanker and bulk vessel services.

2. “Vessel Sharing Agreement” means an agreement between liner operators in which the parties to such agreements shall only discuss and agree on the 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.

In the context of this BEO, the VSA shall not contain any element of price fixing, price recommendation or tariff imposition, by any per person on transport users.

3. “Voluntary Discussion Agreement” means an agreement between liner operators in which the parties to such agreements may exchange and review commercial issues relating to market data, supply and demand forecasts, international trade flows and industry trends, and voluntary and non-binding guidelines.

In the context of this BEO, the VDA shall not contain any element of price fixing or price recommendation by the any person on transport users.