

COMPETITION (BLOCK EXEMPTION FOR VESSEL SHARING AGREEMENTS) ORDER 2017

(version of 7 July 2022, as varied by the Competition (Block Exemption for Vessel Sharing Agreements) (Variation) Order 2022)

In exercise of the powers conferred by section 15 of the Competition Ordinance, the Competition Commission issues the following Order:

Commencement, review and duration

- (1) This Order comes into operation on 8 August 2017.
- (2) The Commission shall commence a review of this Order no later than 8 August 2021, and a further review no later than 8 August 2025.
- (3) Notwithstanding paragraph (2), and subject to section 19(3) of the Competition Ordinance, the Commission may review this Order at any time if it considers it appropriate to do so.
- (4) This Order shall continue in force until 8 August 2026 or until such earlier time as varied or revoked by the Commission in accordance with the Competition Ordinance.

Definitions

- (5) In this Order—

“liner operator” means an undertaking which provides liner shipping services;

“liner shipping services” means the transport of goods on a regular basis on a particular route or routes between ports and in accordance with timetables and sailing dates advertised in advance and available, even on an occasional basis, to any transport user against payment, but shall not include any inland carriage of goods occurring as part of through transport;

“transport user” means any undertaking (such as a shipper, consignee or forwarder) which has entered into, or intends to enter into, a contractual agreement with a liner operator for the shipment of goods; and

“vessel sharing agreement” means an agreement or a set of interrelated agreements between liner operators in which the parties to such agreement or agreements discuss and

agree 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.

Excluded agreements

(6) Subject to paragraph (7), the following activities of a vessel sharing agreement are hereby declared to be excluded agreements for the purpose of section 15 of the Ordinance:

(a) the joint operation of liner shipping services including any of the following activities:

- (i) the coordination and/or joint fixing of sailing timetables and the determination of ports of call;
- (ii) the exchange, sale or cross-chartering of space or slots on vessels;
- (iii) the pooling of vessels and/or port installations;
- (iv) the use of one or more joint operations offices;
- (v) the provision of containers, chassis and other equipment and/or the rental, leasing or purchase contracts for such equipment;

(b) capacity adjustments in response to fluctuations in supply and demand, which may be necessary for the operation of a joint service;

(c) the joint operation or use of port terminals and related services;

(d) any other activity ancillary to those referred to in sub-paragraphs (a), (b) or (c) and which is necessary for their implementation.

Conditions

(7) In order for the activities of a vessel sharing agreement specified in paragraph (6) to qualify as excluded agreements, the vessel sharing agreement shall meet the following conditions:

(a) the parties to the agreement do not exceed the market share limit specified in paragraph (8);

(b) the agreement does not, directly or indirectly, authorise or require liner operators to engage in, or otherwise involve liner operators engaging in, any of the following activities:

- (i) price fixing, the issuing of price recommendations, or the exchange of information with respect to prices charged or proposed to be charged by a liner operator to transport users;
 - (ii) the limitation of capacity or sales, other than the capacity adjustments referred to in paragraph (6)(b); and/or
 - (iii) the allocation of markets or customers;
- (c) the agreement allows liner operators to withdraw from the agreement on giving any agreed and reasonable period of notice without financial or other penalty such as, in particular, an obligation to cease providing liner shipping services in a market, whether or not coupled with the condition that such activity may be resumed only after a certain period has elapsed.

Market share limit

- (8) For the purposes of this Order, whether parties exceed the market share limit shall be determined as follows:
- (a) parties to a vessel sharing agreement do not exceed the market share limit if they hold, in a market, a combined market share of not more than 40%;
 - (b) parties to a vessel sharing agreement shall be deemed not to exceed the market share limit in sub-paragraph (a) if they hold, in a market, a combined market share of not more than 45% for a period of two consecutive years;
 - (c) the market shares referenced in sub-paragraphs (a) and (b) shall be calculated by reference to:
 - (i) the total volume of the goods carried by each party to the vessel sharing agreement in the market, whether or not the goods are carried pursuant to the vessel sharing agreement; or
 - (ii) the aggregate cargo carrying capacity of the vessels operating in the market of each party to the vessel sharing agreement, whether or not the vessels are deployed pursuant to the vessel sharing agreement,



in each case measured in freight tonnes or 20-foot equivalent units.

Issued on 8 August 2017.

[Signed]

Anna WU Hung-yuk
Chairperson, for and on behalf of the
Competition Commission