

Competition & Antitrust and Trade

Block Exemption Order for Certain Liner Shipping Agreements Extended Three Years to 31 Dec 2024

Executive Summary

Anticompetitive agreements are prohibited under section 34 of the Competition Act ("**section 34 prohibition**"). However, under recommendation by the Competition and Consumer Commission of Singapore ("**CCCS**"), the Minister for Trade and Industry may order an exemption of certain types of agreements from the section 34 prohibition on the basis that a category of agreements fulfils the net economic benefit ("**NEB**") criteria, i.e. a block exemption.

Essentially, an agreement/collaboration fulfils the NEB criteria if the collaboration improves production or distribution of goods and services; restrictions in the agreement are indispensable to achieving such improvements; and the collaboration does not eliminate competition in respect of a substantial part of the good/service.

Currently, the only block exemption in Singapore is the Competition (Block Exemption for Liner Shipping Agreements) Order ("**BEO**") which exempts certain types of liner shipping agreements from the section 34 prohibition. First introduced in 2006, the BEO has been extended several times with various amendments lodged under it over time and was due to expire on 31 December 2021. The Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2021 ("**Amendment Order**") extends the BEO for another three years, from **1 January 2022 to 31 December 2024**, and amends the scope of liner shipping agreements covered thereunder. The extended duration of the BEO took effect from 15 November 2021 and the other amendments will take effect from 1 January 2022.

This follows CCCS' earlier public consultation where CCCS proposed an extension of the BEO in respect of vessel sharing agreements for liner shipping services and price discussion agreements for feeder services. Respondents were generally supportive of these proposals and these are incorporated in the Amendment Order. CCCS has also issued its Response to feedback received on the public consultation.

This Update highlights the extension and other salient amendments to the BEO, such as the categories of liner shipping agreements covered and the cancellation of exemption.

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Liner Shipping Agreements Covered under Amended BEO

Under the previous BEO, liner shipping agreements were exempted from the section 34 prohibition subject to five conditions, namely:

- An aggregate market share of the parties to the agreement of no more than 50%;
- Each contracting party permitted to have its own confidential service arrangements with its customers;
- Each contracting party allowed to withdraw from the agreements by giving notice to the other parties without penalty (financial or otherwise);
- The agreements do not subject the contracting parties to a mandatory "tariff", i.e. a list of prices and remuneration that liner operators may offer to transport users; and
- Contracting parties not required to disclose confidential information pertaining to service arrangements.

Liner shipping agreements covered were broadly defined as agreements "*between 2 or more vessel-operating carriers which provide liner shipping services pursuant to which the parties agree to co-operate in the provision of liner shipping services in respect of*" technical, operational or commercial arrangements and/or price and/or remuneration terms.

Upon the recommendation by CCCS, the amended BEO now defines the two distinct types of liner shipping agreements it applies to:

- **Vessel sharing agreements**, whereby the parties 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, **but do not discuss or agree on prices or remuneration terms offered to third parties**; and
- **Price discussion agreements**, whereby the parties to the agreement discuss commercial arrangements relating to the provision of liner shipping services, including prices and remuneration terms offered to third parties.

Whilst the BEO continues to exempt vessel sharing agreements subject to the five conditions stated above, only price discussion agreements **for feeder services** can now benefit from the block exemption.

The amended BEO defines feeder services as liner shipping services "*provided to a liner operator operating a liner shipping service on a route between Singapore and another port outside of Southeast Asia or South Asia, where a vessel is used to transport containers owned by the liner operator on a route between Singapore and another port in Southeast Asia or South Asia*".

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In other words, the amended BEO does not apply to price discussion agreements for main line services. As such, the exemption under the amended BEO is limited to the agreement being a vessel sharing agreement or a price discussion agreement for feeder services.

In making its recommendations to narrow the scope of the BEO, CCCS had assessed that price discussion agreements for main line services were not relevant to Singapore-related routes anymore, with main lines having generally withdrawn from such price discussion agreements. As such, there was no need to extend the exemption to such agreements.

With regard to the two other categories of liner shipping agreements, CCCS found that they generate NEB for Singapore and should therefore continue to be covered under the amended BEO:

- **Vessel sharing agreements for liner shipping services**

Among other reasons, these agreements improve Singapore's port connectivity which brings benefits to the Singapore economy as a whole. Additionally, such agreements boost competition among liners by allowing smaller liners to provide services to compete with larger ones or in alliance with other liners. Also, the conditions which these agreements are subjected to under the BEO ensure that any anti-competitive effects are reduced to a minimum.

- **Price discussion agreements for feeder services**

Whilst main lines no longer find price discussion agreements relevant, price discussion agreements are still relevant to feeders which attract and anchor main lines to Singapore.

Feeders expand Singapore's shipping network to support Singapore as a major transshipment hub. On balance, the anti-competitive effect from the use of these agreements appears limited and surcharges imposed by feeders are still subject to negotiation with main lines which have countervailing buying power.

Cancellation of Exemption

Under the previous BEO, the exemption would be cancelled if there had been a breach of certain specified conditions. The amended BEO adds an additional provision that the exemption will be cancelled if the agreement ceases to be the specified type of agreement, i.e. a vessel sharing agreement or a price discussion agreement for the provision of feeder services.

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Duration of Extension

Whilst the recommendations by CCCS in previous reviews was to extend the BEO for five years, CCCS has only recommended a three-year extension this time to allow for more regular review of the relevance of the BEO. The Order has thus extended the BEO as amended until 31 December 2024 only.

Our Comments

The amended BEO recognises the importance of certain liner shipping agreements to Singapore's economy as a whole, and it is on the basis of their significant contribution to Singapore's status as a major transshipment hub that vessel sharing agreements and price discussion agreements for feeder services continue to be exempted. It is notable, however, that the exemption of price discussion agreements has been significantly limited since it now only applies to feeder services and reflects CCCS's considerations of the new market circumstances.

The shorter duration of the amended BEO is further sign of CCCS' determination to ensure that Singapore competition policy and regulations remain relevant and adapted to the industries they apply to. In other words, this reflects the changing face of competition concerns in this area in that arguably greater competition is seen to exist, which thus negates the need for the BEO to apply. Of course, the narrowing of the scope of the BEO could also reflect the view that sufficient time has been provided to businesses in this area to level up and compete effectively independently. This also means that CCCS will actively monitor and review the shipping industry. In doing so, CCCS will likely not hesitate to investigate any suspected anti-competitive behaviour.

Businesses providing main line services must be aware of the reduced scope of the BEO to ensure that they do not inadvertently fall afoul of the Competition Act with respect to any price discussion agreements.

Further Information

If you have any queries on the subject matter of this Update, please feel free to contact our team members below who will be happy to assist.

Click on the following links for more information:

- [Competition Act - Competition \(Block Exemption for Liner Shipping Agreements\) \(Amendment\) Order 2021](#)
- CCCS Public Consultation and CCCS Response to Feedback Received on Public Consultation: refer [here](#).
- CCCS media release on "[CCCS Recommends Three-Year Extension of the Block Exemption Order for Certain Liner Shipping Agreements](#)"

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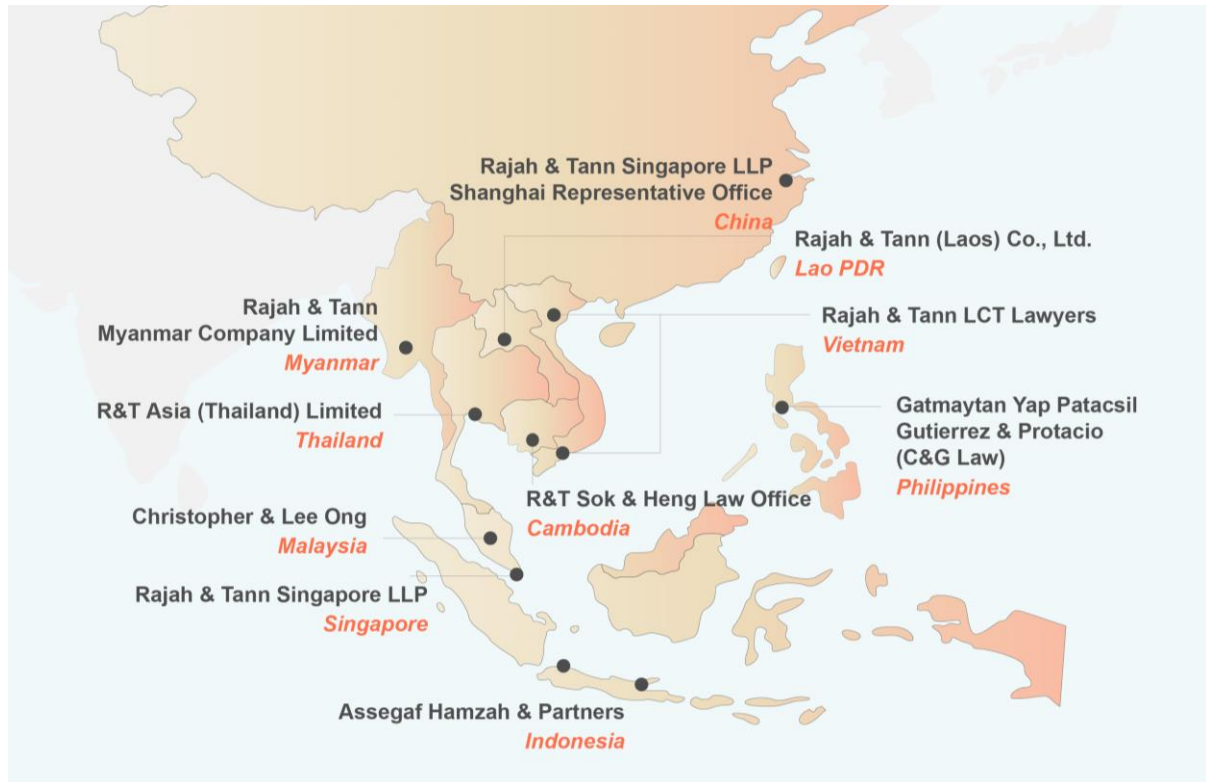
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