The Chartered Institute of Logistics and Transport

4th November 2021

Response to the Competition Commission's Consultation on the Review of the Competition Order 2017 – Block Exemption for VSA

Market Developments

Q1) What have been the major developments in the liner shipping industry since the issuance of the Order? For example, with regard to general market conditions, prices, service levels, the state of competition and the level of cooperation among shipping lines.

- Prior to the issuance of the Order in 2017 *(Ref. FT July 10, 2014)* MSL's intention of forming P3 Network (MSL+MSC+CMA CGM) by pooling 250 ships, resulting in 3 carriers' combined tonnage of about 6.4mln teus (about 37% of world's container fleet of 17.3 mln at the time). The move was rejected by China's competition authorities. Eventual formation of 2 M with combined tonnage of less than 30% of overall East-West trades, a precursor of the subsequent formation of alliances by other shipping lines in order to remain competitive.

- 2017 Hanjin Shipping Company's demise/bankruptcy on February 17, 2017. New Alliances formation in 2017:
  - 2M (MSL, MSC)
  - THE Alliance (HPL,ONE,YML+HMM)
  - Ocean Alliance (COSCO,OOCL,CMA-CGM,EMC)

  FBI's issuance of subpoenas to a number of shipping lines over a US price fixing probe including the raid on the Box Club meeting in March 2017 (BOX Club is formerly known as the Int'l Council of Containership Operators).

- 2020-21 Top 10 container lines accounting for 84.5% of world liner fleet as of September 1, 2021. Pacific International Line (PIL) looking for investors due to financial difficulties impacted by COVID-19 and market volatility including high bunker prices and oversupply of capacity. (In February, PIL filed an application to the Singapore High Court to seek approval for the company's proposed restructuring plan. It secured USD600mln fresh capital in March 2021 to stay afloat.) HMM investing tonnages in the interim between 2017 and 2020. (As of 2020, HMM had built and launched the world's two largest container ships in terms of TEU capacity, the *HMM Algeciras* with a maximum TEU capacity of 23,964, and the *HMM Copenhagen* with a maximum capacity of 23,820 TEU). Collective shipping capacity reduction of some 25% in Q1'2020. Shipping rates stabilisation resulting in more "healthy" competition among shipping lines. Demolition of 15 container vessels in 1H2021 as owners opted to capitalise on the booming charter rates (down from 56 vessels in 1H and 26 vessels in 2H2020). Inactive fleet of 177 ships for 653,031 teus accounting for about 2.7% of global cellular fleet capacity of about 24.57 mln teus *(Alphaliner's survey in August 2021).* Inactive fleet rate of around 5% in Q4 2020, reportedly due to carriers' conversion of diesel to low sulphur engines. Order books of ship yards and container

  factories totally full up to 2023-24. Shipping lines making up for the past 20 years of financial loss in 2020/7 to 2021/6 during which the ocean freight rates had increased

The Chartered Institute of Logistics and Transport in Hong Kong 香港運輸物流學會
(Incorporated in Hong Kong with limited liability by guarantee)
7/F Yue Hing Building | 103 Hennessy Road | Wanchai | Hong Kong
T (852) 2866 6336 | F (852) 2866 6118 | E info@cilt.org.hk | W www.cilt.org.hk

by 5 to 8 times depending on trade lanes and time of shipment. (Drewry's anticipation of container shipping lines' profit to approach USD100bln in 2021, making up for the USD100 bln financial loss to the industry in the past 20 years.)

Q2) What have been the impacts of the COVID-19 pandemic on the liner shipping industry? If so, how long do you expect that any such impact will last?

Massive disruption of supply chains creating huge choke points along the whole pipeline. Supply of ship's crew disrupted by the pandemic as well as by the infected crew themselves. Sky high vessel and container chartering rates, esp. after blockage of Suez Canal by "Ever Given" in March and bottlenecks at China's Yantian port in May 2021. Stratospheric increase in total transportation costs (4 to 5 times YOY), without the corresponding improvement in service deliverables in terms of capacity, frequency, and reliability. Anticipation of Covid-19 impacts lasting until 2H 2022.

Q3) To the extent not already addressed in (1) and (2), have there been any developments since the issuance of the Order that have taken place in the economy of Hong Kong or in the economy of any place outside Hong Kong that affect VSAs?

Port congestion resulting from operational inefficiency at vessels' call ports prior to HK, e.g. Shanghai (weather condition), Shenzhen and Ningbo (Covid 19 induced lock down). Vessels' schedule unreliability due to port congestions at e.g. LA (12 days), EU (3 to 7 days), Yantian (3-4 days) as at beginning of September 2021. Commitments of HKSPA (founded in 2019) to maintain fair level playing field in HK Port.

Q4) Have there been any changes with respect to the competition concerns to which vessel sharing agreements may give rise, since the issuance of the Order? In this respect, the Commission previously found that VSAs could potentially give rise to: a) reductions in service variety, b) capacity restrictions (where parties to the VSA had market owner), and c) sharing of competitively sensitive information.

Port-call omissions ("blank sailings") to make up for accumulated sailing delays caused by port congestion, e.g. 2M's omission of Rotterdam call on their Asia-Europe loop for subsequent 7 weeks from July, and The Alliance following suit Ongoing port congestion in North Europe has forced the 2M partners Maersk and MSC to extend a number of temporary rotation changes for three of its six Far East - North Europe services, i.e. extension of temporary port omissions in North Europe, incl. Hamburg/Le Havre/Antwerp *(Alphaliner's Newsletter No. 2021-39).* Shipping lines not heeding obligation to keep consumers informed on service performance in return for the "Block Exemption for VSA", e.g. Inadequate pre-alert on schedule changes and vessels' tracking and tracing (Close to 700 vessels ETA delayed by more than a week at USWC in Jan-May 2021). "Hot box" and "late cargo" accommodations no longer on offer. Some carriers' skewing FOB contracts towards CNF spot deals to maximise profit. Managing "blank sailings" during trough seasons before 2H 2020. Space allocations (by a few carriers) conditional upon shipper's support of VAS, like haulage, customs declaration, cargo insurance. Shipping lines applying "Empty Container

Reservation Fee", "Container Guarantee Fee" regardless of shippers' complaint. Shippers booking space on ship 21 days in advance.

Q5) Have there been any changes with respect to the economic efficiencies and resulting benefits to consumers in Hong Kong to which vessel sharing agreements may give rise since the issuance of the Order? In this respect, the Commission previously found that VSAs could give rise to a) broader service coverage and higher service frequency than if shipping lines were operating alone; b) cost efficiencies for shipping lines through use of larger vessels; and c) decreased costs of entry and expansion for shipping lines on particular trade routes.

a) Broader service coverage and higher service frequency *(Alphaliner's Newsletter No.2021-29).* MSL's reorganisation of its North Europe-Middle East-India service to improve schedule reliability and more flexible coverage; ditto Far East-India connections. CNC's new China-Vietnam-Straits-Bangladesh loop in partnership with SITC to offer direct connection between Vietnam and Bangladesh with first sailing on July 18, 2021 from Singapore.

b) Cost efficiencies achieved via economy of scale *(Alphaliner's Newsletter No.2021-33).* MGX-23 ships as typified by EMC's 20,244 teus "Ever Greet" delivered in October 2019, itself subsequently taken over by MGX-24 ships ranging from the 23,790 teus "HMM Algeciras" to the 23,992 teus "Ever Ace". Basing solely on the current fleet and firm vessel orders, the MGX vessel capacity growth by the 2M, OCEAN, THE Alliance anticipated to reach 3.55mln teus by 2023, contributing about 13% of the global liner fleet of 27.35mln teus. No noticeable "passing back" to consumers the earnings/savings from scale growth in terms of ocean freight rate reductions ("bland sailings helping to arrest downward revision of ocean freight rates).

c) Reduced costs of market entry and expansion *(Alphaliner's Newsletter 2021-33).* ONE and CMA-GM filing of a slot exchange agreement with FMC to allow ONE to access the CMA-CGM operated China-USWC PRX service. ONE's introduction of 1x1,141 teus vessel to improve its feeder connection service between Singapore and Yangon under TMM branding since late July 2021. IAL's enhancement of its connection between Western Malaysia and Southern Vietnam in September 2021 via joint operation with WH in the name of Vietnam Malaysia Express (VMX). Benefits to consumers in terms of reduction in ocean shipping cost not noticeable. (Argument from shipping lines used to be that the savings from economy of scale was first and foremost for shipping lines' survival in the throat-cutting business environment; passing back savings to consumers was secondary.)

Q6) With respect to the competition concerns and efficiencies addressed in (4) and (5), are there any differences in the situation before and during the COVID-19 pandemic? If so, please identify those differences.

4th November 2021

Pre-Covid 19 Cautious investment in tonnage capacity due to uncertainty of business prospects in aftermath of HJS's demise HMM and ZIM's survival on strength of respective government's financial support. Practice of "blank/void sailings" to maintain rates at levels contributive to keeping the practising shipping lines afloat.

During Covid 19 Infrastructural constraints, from road to terminal to ocean carriage, resulting in massive disruption of global supply chains, and in turn under supply of transportation means to meet consumer demands. Overseas buyers asking sellers to change sales terms from FOB to CIF, DAP or DDP to shift the shipping costs and liabilities to sellers. Shipping lines unprecedentedly huge profits prompting investment in hardware (container ships and containers). Regulatory compliance in China and USA, EU by big shipping lines resulting in cautious implementation of ocean freight rate and surcharge increase.

Effectiveness of the Order

Q7) Does the Order continue to be merited and effective? In your response, please address: a) the desirability of maintaining a stable and predictable regulatory environment in relation to competition for liner shipping; and b) the likely effects if the Order were allowed to expire.

Stable and predictable regulatory environment conducive to long-term capital investment in transportation, enabling provision of services to support world economic growth. Laissez faire/unregulated environment attracting tramp operators for opportunistic service provision for short-term profits, discouraging liner shipping investors for long-term commitment to the industry, including service coverage, sailing frequency, rate stability etc., ultimately detrimental to global supply chain sustainability.

Q8) Have there been any material changes in the forms or terms of VSAs since the issuance of the Order?

No comment as no access to such information.

Market share limit

Q9) Have there been any changes in the market which would impact the appropriateness of the market share limit since the issuance of the Order?

Different shipping lines having different business strategies. Maersk Line apparently positioning itself for a total logistics solution provider rather than purely ocean liner. As such, their market share aggrandisement aspiration not anticipated. MSC, on the other hand, aggressively acquiring new tonnages resulting in total tonnage anticipate to surpass Maersk Line's Onus on the Competition Commission to decide on the market share caps for individual shipping lines.

Q10) In the context of intra-regional trades (for example, the intra-Asia trade), have there been any changes which suggest the market share limit should be applied by reference to a particular point-to-point route on the trade instead of by reference to the trade as a whole?

The Chartered Institute of Logistics and Transport in Hong Kong 香港運輸物流學會
(Incorporated in Hong Kong with limited liability by guarantee)
7/F Yue Hing Building | 103 Hennessy Road | Wanchai | Hong Kong
T (852) 2866 6336 | F (852) 2866 6118 | E info@cilt.org.hk | W www.cilt.org.hk

Barring rare exceptions, point-to-point based market share allocation basically unrealistic from provision of port coverage and sailing frequency point of view, mind bearing the negative impact of single corridor/point-to-point routing on shipping lines 'equipment imbalance problem , not to mention difficulty of achieving economy of scale. Market share limit on sub-regional basis, e.g. GBA to GMS (Greater Megon Sub-region) more reasonable and therefore acceptable to the participating shipping lines

Other matters

Q11) Please provide any further information, views or evidence you consider may assist the Commission in formulating a proposal on the future of the Order.

The exampled responses to the foregoing questions serve to put in perspective where shipping lines have fallen short of their obligations to consumers in return for the Block Exemption for VSA. The renewal of the Block Exemption for VSA is therefore subject to shipping lines' self-discipline in avoidance of "blank sailings", demonstrable proactive communications with consumers about service changes, deficiencies in service delivery and reasonable compensations thereafter.