

COMPETITION ACT
(CHAPTER 50B, SECTION 36)

COMPETITION
(BLOCK EXEMPTION FOR LINER SHIPPING AGREEMENTS)
ORDER

ARRANGEMENT OF PARAGRAPHS

Paragraph

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[1st January 2006]

Citation

1. This Order may be cited as the Competition (Block Exemption for Liner Shipping Agreements) Order.

Duration

2. Unless earlier varied or revoked in accordance with the Act, this Order shall continue in force until 31 December 2020.

[S 768/2010 wef 16/12/2010]

[S 718/2015 wef 25/11/2015]

Definitions

- 3.—(1) In this Order, unless the context otherwise requires —
- “liner operator” means an undertaking which —
- (a) provides liner shipping services; and
 - (b) is a party to a liner shipping agreement;

“liner shipping agreement” means an agreement 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 one or more of the following:

- (a) technical, operational or commercial arrangements;
- (b) price;
- (c) remuneration terms;

“liner shipping services” —

- (a) means the transport of goods on a regular basis on any particular route between ports and in accordance with timetables and sailing dates advertised in advance and made available, even on an occasional basis, by a liner operator to any transport user against payment; and
- (b) includes any inland carriage of goods occurring as part of through transport;

“market” means any market for liner shipping services in which the parties to a liner shipping agreement operate under the agreement;

“price” —

- (a) means the price for which a liner operator performs or offers to perform liner shipping services; and
- (b) includes any charge, other than the base freight rate, that is incidental to or reasonably connected with the provision of liner shipping services, whether arising by reason of the provision of the liner shipping services or by reason of the occurrence of an uncertainty;

“remuneration term” means any term affecting payment or the amount of the price in relation to the provision of liner shipping services (including a reduction thereof);

“service arrangement” means an agreement concluded between one or more transport users and a liner operator under which, in return for an undertaking from the transport user to

commission the transportation of a certain quantity of goods over a given period of time, a transport user receives an individual undertaking from the liner operator to provide an individualised service which is of a given quality and specially tailored to the needs of the transport user;

“tariff” —

- (a) means a list of prices and remuneration terms for which, pursuant to a liner shipping agreement, liner operators agree they may offer liner shipping services to transport users; but
- (b) does not include prices and remuneration terms under a service arrangement;

“through transport” means continuous transportation by a combination of sea and inland carriage from a point of origin to a destination —

- (a) which is undertaken by a liner operator;
- (b) which is performed by the liner operator undertaking the transportation —
 - (i) on its own;
 - (ii) partly on its own and partly through one or more other carriers; or
 - (iii) through one or more other carriers, at least one of which is a liner operator; and
- (c) for which a single amount is charged by the liner operator undertaking the transportation;

“transport user” means —

- (a) an undertaking which has entered into, or demonstrates an intention to enter into, a contractual or other arrangement with a liner operator for the shipment of goods; or
- (b) an association of shippers.

(2) Where any provision of this Order is applicable to an agreement, such provision shall also be applicable, with the necessary modifications, to any decision that is made by an association of undertakings or a concerted practice.

Market share limit

4.—(1) For the purpose of this Order, the parties to a liner shipping agreement do not exceed the market share limit if they hold, in a market, an aggregate market share of not more than 50% calculated by reference to —

- (a) the volume of goods carried; or
- (b) the aggregate cargo carrying capacity of the vessels operating in the market measured by freight tonnes or 20-foot equivalent units.

(2) The parties to a liner shipping agreement shall be deemed not to exceed the market share limit if they hold, in a market, an aggregate market share of not more than 55% calculated by reference to the matters referred to in sub-paragraph (1)(a) or (b) for a period of not more than 2 consecutive calendar years.

Exempt agreements

5.—(1) A liner shipping agreement is, in respect of a market, exempt from the section 34 prohibition if —

- (a) the parties to the agreement do not exceed the market share limit in the market;
- (b) the agreement allows liner operators —
 - (i) to offer, on the basis of individual confidential contracting, their own service arrangements; and
 - (ii) to withdraw from the agreement on giving any agreed 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; and

(c) the agreement does not require any of the following activities to be undertaken by the liner operators:

- (i) mandatory adherence to a tariff;
- (ii) the disclosure, whether to other liner operators or otherwise, of confidential information concerning service arrangements.

(2) Where the parties to a liner shipping agreement exceed the market share limit in a market, the agreement is, in respect of the market, exempt from the section 34 prohibition if —

(a) the agreement satisfies the conditions specified in sub-paragraph (1)(b) and (c);

(b) subject to sub-paragraph (3), the parties file with the Commission, in such mode and manner and within such period of time as may be specified by the Commission —

(i) a copy of the agreement and any variation or amendment thereto; and

(ii) where any variation or amendment is made to the agreement from time to time subsequent to the filing of the documents referred to in sub-paragraph (i) —

(A) such variation or amendment; and

(B) the agreement and all preceding variations or amendments thereto;

(c) the parties make available upon request to the Commission, in such mode and manner and within such period of time as may be specified by the Commission, documents and details relating to —

(i) any tariff;

(ii) the structure and service level of the liner shipping services; and

(iii) other aspects of the liner shipping services,
under the agreement relevant to the market;

(d) the parties make available to transport users, within such period of time as may be specified by the Commission, information concerning —

(i) any tariff; and

(ii) the structure and service level of the liner shipping services,

under the agreement relevant to the market, as the Commission may specify —

(A) by allowing for the examination of documents at the offices in Singapore of the parties or their agents; or

(B) at a publicly available internet website,

and, in any event, upon request at a reasonable cost in paper or electronic form; and

(e) the parties notify —

(i) the Commission of the details of any variation or amendment made from time to time to the documents and details referred to in sub-paragraph (c); and

(ii) transport users of the details of any variation or amendment made from time to time to the information referred to in sub-paragraph (d),

in such mode and manner and within such period of time as may be specified by the Commission.

(3) For the purpose of sub-paragraph (2)(b), where a liner shipping agreement, or any variation or amendment thereto, or any part of such agreement, variation or amendment, is not in writing, the parties to the liner shipping agreement shall file a memorandum providing a full description of the details of the agreement, variation or amendment, or part thereof, that is not in writing.

(4) The parties to a liner shipping agreement claiming the benefit of the exemption under sub-paragraph (1) or (2) shall, upon notice being given by the Commission and within such period of time as may be specified by the Commission, demonstrate that sub-paragraph (1) or (2), as the case may be, is satisfied.

Grace period

6.—(1) Where the parties to a liner shipping agreement exceed the market share limit but do not satisfy paragraph 5(2), the exemption under paragraph 5(1), if applicable, shall continue to apply for a period of 6 months following the end of the calendar year during which the limit was exceeded.

(2) The period in sub-paragraph (1) shall be extended for another 6 months if the excess is due to the withdrawal from the market of an undertaking which is not a party to the liner shipping agreement.

(3) After the expiry of the period referred to in sub-paragraph (1) or (2), as the case may be, the exemption under paragraph 5(1) shall cease to apply.

Cancellation of exemption

7.—(1) Where there has been a breach of any condition specified in paragraph 5(1)(b) or (c), the exemption under paragraph 5(1) or (2), as the case may be, shall be cancelled from such date as the Commission may specify.

(2) Where —

- (a) there is a failure to comply with any obligation specified in paragraph 5(2)(b), (c), (d) or (e); or
- (b) the Commission finds in a particular case that the agreement has effects which are incompatible with the provisions of section 41 of the Act,

the Commission may cancel the exemption under paragraph 5(1) or (2), as the case may be, from such date as the Commission may specify.

[G.N. No.S 420/2006]

LEGISLATIVE HISTORY
COMPETITION
(BLOCK EXEMPTION FOR LINER SHIPPING AGREEMENTS)
ORDER
(CHAPTER 50B, O 1)

This Legislative History is provided for the convenience of users of the Competition (Block Exemption for Liner Shipping Agreements) Order. It is not part of this Order.

1. G. N. No. S 420/2006 — Competition (Block Exemption for Liner Shipping Agreements) Order 2006

Date of commencement : 1 January 2006

2. 2006 Revised Edition — Competition (Block Exemption for Liner Shipping Agreements) Order

Date of operation : 31 August 2006

3. G. N. No. S 768/2010 — Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2010

Date of commencement : 16 December 2010

4. G.N. No. S 718/2015 — Competition (Block Exemption for Liner Shipping Agreements) (Amendment) Order 2015

Date of commencement : 25 November 2015