**PRELIMINARY ASSESSMENT OF THE BLOCK EXEMPTION FOR VESSEL SHARING AGREEMENTS IN RESPECT OF LINER SHIPPING SERVICES**

## A. Legal Framework of the Block Exemption under the Competition Act 2010

1. Section 8(1) of the Act allows the Commission to grant a Block Exemption for a category of agreements covered under section 4, provided the agreement meets the four criteria set out in section 5 of the Act. Section 5 states:

   *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.*

2. Upon receiving a block exemption application under the Act, the Commission will assess whether the prohibition agreement meets all requirements under section 5. The Applicants bear the burden of proving that their exemption application satisfies all section 5 requirements and merits relief from liability under the Act.

3. Prior to concluding its assessment of any exemption application, the Commission is statutorily required under section 9 of the Act to undertake public consultations and give due consideration to all submissions received.

4. In granting a block exemption, the Commission retains discretionary authority to impose conditions or obligations governing its implementation. Subsequently, the Commission's decision may be published in the Gazette for public notification.

## B. Relevant Market of the Block Exemption Order (BEO)

5. To date, the Commission has granted only one block exemption - the Block Exemption Order for Vessel Sharing Agreements (VSA) pertaining to liner shipping services via maritime transportation.

6. Under the Block Exemption Order for VSA, the relevant market is broadly defined encompassing liner shipping services (defined as scheduled container transport by sea). This definition differs from conventional commercial market definitions to appropriately reflect competitive dynamics in the sector.

7. The geographic market scope covers two forms:

   (i) Long-distance trades routes comprise international shipping routes connecting major economic regions (Europe-Asia trade lanes); and/or
   (ii) Intra-regional or feeder trades comprise of shorter-distance routes within a defined geographic region (e.g., intra-Asia routes connectivity between Malaysia and Hong Kong)

8. Liner shipping services cover any service 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 scheduled transport of goods, by an ocean transport on a regular basis. The service can be through any particular route between ports and 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 tanker and bulk vessel services.

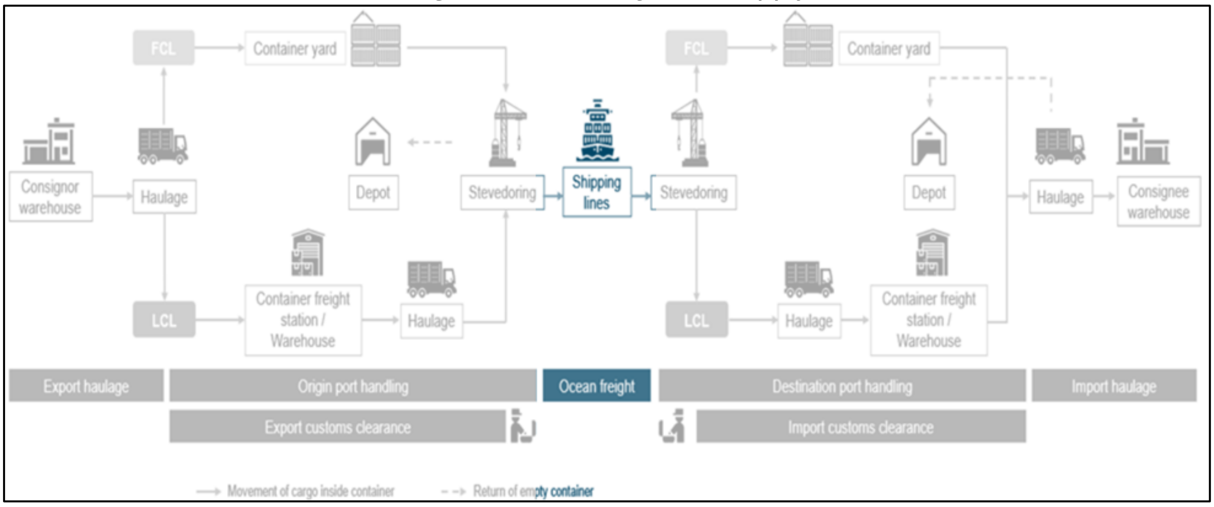
9. The liner shipping services shall not include any inland transport for the carriage of goods which is part of direct services provided by logistic providers, forwarders, depot operators, truckers, railroaders, off-dock consolidation facility, off-dock storage and warehousing services.

10. The VSA between liner operators' parties to such agreement shall only discuss and agree on operational agreements relating to the provision of liner shipping services, including the coordination or joint operation of vessel services and the exchange of charter of vessel space.

11. The VSA excluded any agreements or recommendations regarding rates, including ocean freight rates, landside charges, or any other fee charged to transport users.

12. Referring to ***Figure 1***, VSA among shipping lines apply only to the ocean freight segment where they can collaborate on operational aspects as permitted by the proposed BEO.

***Figure 1***: Port Logistics Supply Chain




Source: MyCC Market Review on Transportation Sector, 2021

13. ***Table 1*** shows a wide range of economic activities by shipping liners that support the efficient transport of containerized cargo, including equipment pooling, terminal use, and shared vessel operations. Among these, mainline and feeder vessel services are important and often conducted under VSA, where carriers agree to share vessel space and coordinate schedules.

***Table 1:*** Shipping Lines Activities under the BEO

| **Economic Activity by Shipping Liner** | |
|---|---|
| 1. Container equipment<br>2. Road (truck) chassis equipment<br>3. Empty container depots<br>4. Inland container ports / terminals<br>5. Inland trucking services<br>6. Inland rail services<br>7. Inland barge services<br>8. Container freight stations (consolidation)<br>9. Marine terminals<br>**10. Mainline (linehaul) vessel services**<br>**11. Feeder (relay) vessel services** | 12. Sales and marketing / customer service<br>13. Bookings<br>14. Documentation (bills of lading, etc.)<br>15. Administration (invoicing, finance, claims)<br>16. Operations offices and related IT<br>17. Web portals, schedules, track & trace<br>18. Security, X-ray facilities<br>19. Groupage services (LCL)<br>20. Secondary warehousing & distribution |

Source: APEC. (2008). *Liner Shipping Competition Policy: Non-Ratemaking Agreements Study (Stage 1)*.

14. According to the APEC study, such agreements enable carriers to achieve "cost efficiencies and service improvements" without coordinating on freight rates and are thus categorized as non-ratemaking agreements (APEC, 2008). In Malaysia, these activities will fall under the BEO, which permits VSAs to enhance service quality and operational efficiency while remaining compliant with competition law.[1]

[1] APEC. (2008). *Liner Shipping Competition Policy: Non-Ratemaking Agreements Study (Stage 1)*. Retrieved from https://www.apec.org/docs/default-source/publications/2008/5/liner-shipping-competition-policy nonratemaking-agreements-study-stages-1-may-2008/08_tpt_liner_stage1.pdf?sfvrsn=2cf2d45c_1

15. APEC study grouped liner shipping activities into two categories: **core** and **minor**. The **core area** involves vessel operations — such as alliances, vessel sharing, and space charters — where most operational agreements are concentrated due to their impact on trade efficiency and network optimization. In contrast, minor areas—like container and chassis interchange or shared port offices — are incidental, typically limited in scale and geographic scope as portrayed in ***Table 2***:

***Table 2:*** Liner shipping activities by category

| **Category** | **Activity area** | **Form of agreed cooperation term** | **Operational scope** | **Operational scale** |
|---|---|---|---|---|
| Core | Vessel Operations | Alliance | Multi-trade, multi-service | Global, 20+ vessels |
| | | Vessel Sharing | Service (vessel string) | Trade, 2-20 vessels |
| | | Space Charters | Service (vessel string) | Trade, share of vessel sailing |
| | | Space Swaps | Service (vessel string) | Trade, share of vessel sailing |
| Minor | Inland & Other Operations | Container Interchange | Country, Port Range | Incidental |
| | | Road Chassis Interchange | Country, Port Range | Frequent (in United States) |
| | | Office, Info/IT Sharing | Country, Port Range | Occasional |
| | | Other | Country, Port Range | Occasional |

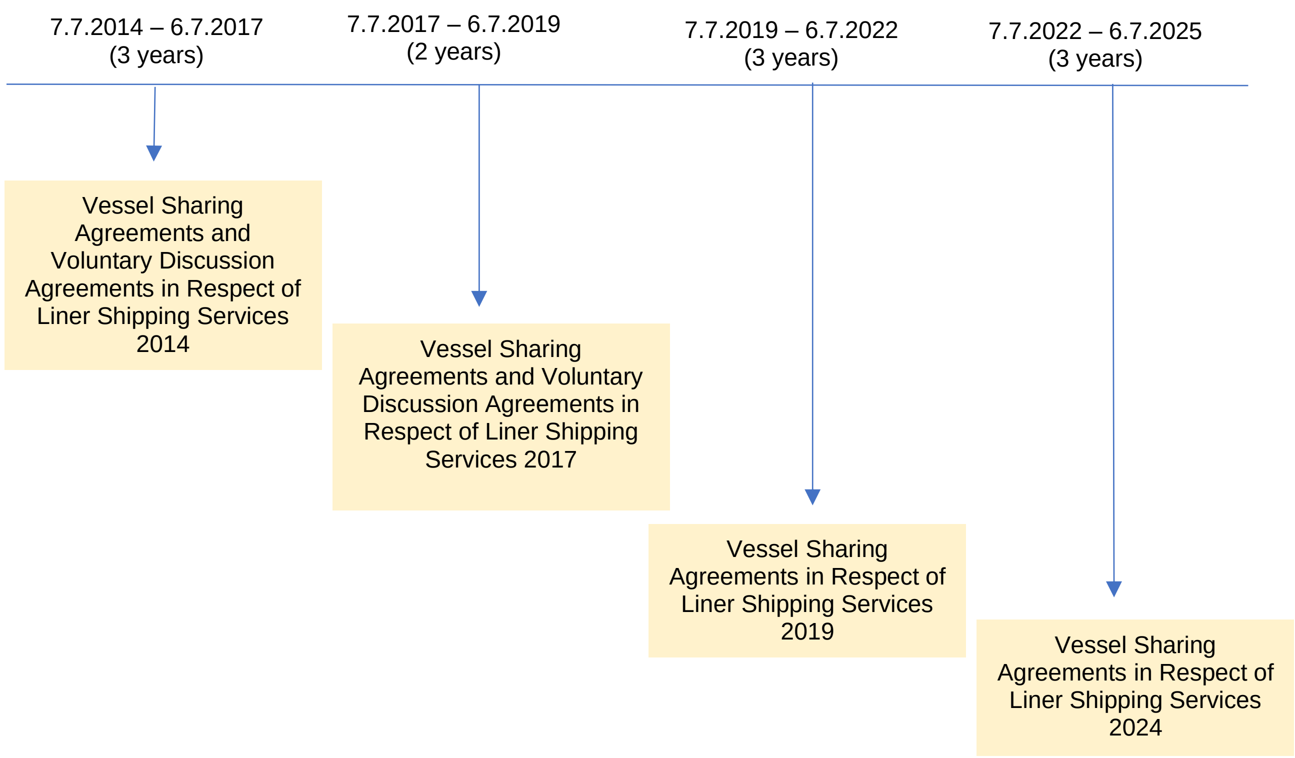
Source: APEC. (2008). *Liner Shipping Competition Policy: Non-Ratemaking Agreements Study (Stage 1)*.

Legend:

Activities covered under BEO for VSA

## C. Past Applications of the Block Exemption Order

16. The past applications of the Block Exemption of Liner Shipping Services are summarised below:




17. Since 7 July 2019, the Commission has granted a block exemption limited to the VSA. This is due to the termination of all Voluntary Discussion Agreements (VDA) in the global ocean shipping trades (including Malaysia). Thus, for practical reasons, the industry did not need a VDA exemption. ***Table 3*** explains the features of VSA and VDA.

***Table 3*: Comparison of VSA and VDA**

| No | Feature | Vessel Sharing Agreements (VSA) | Voluntary Discussion Agreements (VDA) |
|---|---|---|---|
| 1 | Definition | Agreement between liner operators to jointly operate a liner service along a specified route with specific vessels. | Agreement to exchange and review commercial issues such as market data, trade flows, and trends. |
| 2 | Focus | Operational arrangements for vessel coordination, including joint services and space sharing. | Exchange of market information and formulation of voluntary, non-binding guidelines. |
| 3 | Inclusion of Pricing Elements | Prohibited: Must not contain price fixing, price recommendations, or tariff imposition. | Prohibited: Must not contain price fixing or price recommendations. |
| 4 | Disclosure of confidential information | Not obligated, nor permitted, to disclose proprietary or sensitive commercial information. | Not obligated, nor permitted, to disclose proprietary or sensitive commercial information. |
| 5 | Freedom in Contracts and Pricing | Operators are free to enter confidential contracts and offer any pricing or arrangements individually. | Operators are free to enter confidential contracts and offer any pricing or arrangements individually. |
| 6 | Other Names / Terms | Also called consortia, slot exchange/charter/swap, joint service agreements, or alliances (multi-trade). | No information on other terms. |
| 7 | Global Application | Alliances (as VSAs) may cover multiple trades, managing several joint services worldwide. | No indication of global application; focused on data exchange and forecasting. |

| No | Feature | Vessel Sharing Agreements (VSA) | Voluntary Discussion Agreements (VDA) |
|---|---|---|---|
| 8 | Right to Withdraw | Must allow withdrawal with reasonable notice. | Must allow withdrawal with reasonable notice. |
| 9 | Binding Nature | Operational terms are binding for coordination and shared use of vessels. | Entirely voluntary and non-binding. |

Source: MyCC's assessment on Liner Shipping Agreements, 2022

## D. Application of the Block Exemption for Vessel Sharing Agreements in respect of the Liner Shipping Services through Transportation by Sea

18. On 5 May 2025, the Commission received a full application of Block Exemption in respect of Liner Shipping Services for Vessel Sharing Agreements from the Malaysia Shipowners' Association (MASA) and Shipping Association Malaysia (SAM). The Applicants (MASA and SAM), for and on behalf of liner shipping operators, hereby apply to the Commission for the following relief from the prohibitions under section 4 of the Act:

    (i) Application of the block exemption order;
    (ii) Extension of the VSA block exemption period to five (5) years; and
    (iii) Removal of certain holdover provisions from the 2014 BEO that are apply to VSAs, specifically the removal of provisions regarding "information concerning pricing or tariff of the liner shipping services through transportation by sea" as VSA do not involve discussions about charges.

19. Based on preliminary assessment, VSAs are arrangements between shipping lines to share vessel space and coordinate operations, allowing for optimised capacity utilisation while maintaining competitive independence. The Commission's initial evaluation of these agreements reveals:

(i) VSAs represent operational cooperation, with carriers maintaining independent pricing and competition in other areas. Information sharing among VSA members is very limited.

(ii) The carriers continue to price and sell their VSA-operated services independently of each other.

(iii) The shipping lines (VSA members) continue to compete on non-price aspects of their services, such as customer service.

**E. Application to the Efficiency Exclusion**

20. Before granting a block exemption, the Commission must assess the application to determine if it will generate net economic benefits, based on criteria set out in section 5 of the Act.

21. The assessment and recommendations incorporate feedback from key industry stakeholders including industry associations, market participants (such as liners, freight forwarders, importers/exporters), and public sector agencies.

22. The Commission also evaluates recent market developments in the liner shipping industry and the international regulatory landscape regarding VSA.

23. The Applicants may be relieved of their liability for prohibition infringement under section 4 based on the following grounds:

**(a) <u>There are significant identifiable technological, efficiency or social benefits directly arising from the VSA.</u>**

(i) Analysis shows VSAs and liner shipping serve as a vital engine of international trade and commerce. This structure enables both small and large exporters and importers to move goods efficiently and cost-effectively, eliminating the need to charter entire vessels or reserve large cargo spaces through special contracts.

(ii) The high levels of investment and the ability to guarantee a fixed schedule are required for an individual carrier to provide a scheduled service on a particular trade. Carriers have continued to invest in additional tonnage to meet customer needs.

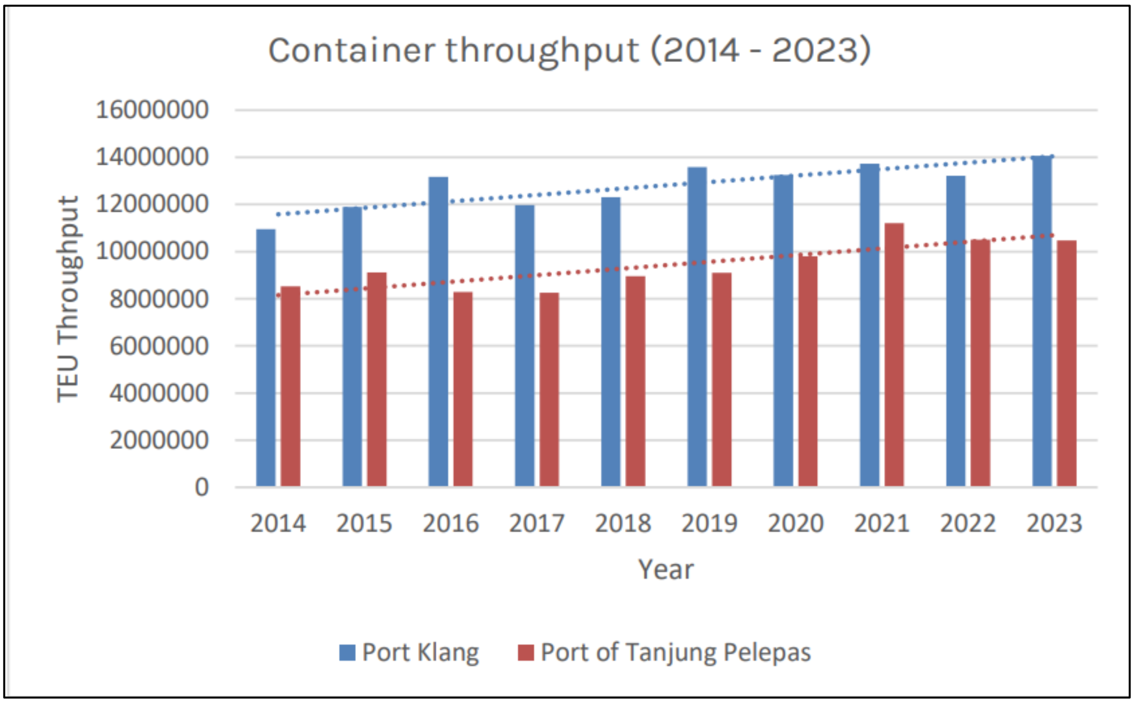
(iii) By facilitating the sharing of vessels among liners, vessel sharing agreements increase the utilisation of space on vessels and allow liners to operate at a lower cost than if each liner were to operate on its own and to provide services using vessels operated by other liners. The connectivity and concentration of liner shipping services available in Malaysia generates considerable benefits to Malaysia, both directly and indirectly, including providing a higher degree of connectivity and service choice for Malaysian importers and exporters.

(iv) Based on preliminary assessment, VSA have proven essential to the maritime industry by optimising vessel utilisation and equipment deployment, leading to improved operational efficiency and cost management. Initial assessment suggest that VSAs continue to facilitate market access and service expansion, with particular benefits observed for new entrants and smaller carriers through strategic partnerships with established carriers that have extensive network coverage. These findings indicate positive contributions to industry competitiveness and service reliability.

(v) VSAs have strengthened service quality on Malaysian trade routes by maintaining robust direct and transshipment services across Malaysian ports. Container throughput data supports this observation, with Malaysia recording approximately 30.68 million TEUs in 2023, showing substantial growth from 27.29 million TEUs in 2022. These agreements appear to effectively enhance port connectivity throughout Malaysia, contributing to the overall efficiency of maritime operations.[2] As of today, vessel sharing agreements improve the connectivity of Malaysia's ports.

[2] STU Supply Chain. (2025). *A new face among the world's top ten container ports*. STU Supply Chain.https://stusupplychain.com/A-New-Face-Among-the-World-s-Top-Ten-Container-Ports-id48340826.html

***Figure 2***: Container throughput for Port Klang and Port of Tanjung Pelepas




Source: Submission by Applicants

(vi) Referring to ***Figure 2***, in 2023, Malaysia's leading ports, Ports Tanjung Pelepas (PTP) and Port Klang handled the highest container volume in its history at 14.6 million TEUs in 2023, surpassing its 2022 volume of 13.22 million TEUs. Both Port Klang and PTP are among the top 20 busiest ports in the world.[3]

**(b) <u>The benefits could not reasonably have been provided by the parties to the VSA without the agreement having the effect of preventing, restricting or distorting competition.</u>**

(i) The vast majority of international carriers serving Malaysian ports operate through VSAs. Port Klang rose from 13th to 11th place among the world's 100 busiest container ports in 2023, according to Lloyd's List rankings.

[3] Kerriou, A. (2024). Containers: the world's main ports in the first half of 2024. *UPPLY*. https://market-insights.upply.com/en/containers-the-worlds-main-ports-in-the-first-half-of-2024

***Figure 3***: Global Top 20 Container Port, 2023

| Global Top 20 Container Ports in 2023 | | | | |
|---|---|---|---|---|
| **Rank** | **Port** | **Country** | **Throughput (TEU)** | **Year-on-Year Growth Rate (%)** |
| 1 | Shanghai | CN | 49,158,000 | + 3.9 % |
| 2 | Singapore | SG | 39,013,000 | + 4.6 % |
| 3 | Ningbo - Zhoushan | CN | 35,300,000 | + 5.8 % |
| 4 | Qingdao | CN | 30,000,000 | + 11.9 % |
| 5 | Shenzhen | CN | 29,880,000 | - 0.5 % |
| 6 | Guangzhou | CN | 25,410,000 | + 3.3 % |
| 7 | Busan | KR | 22,750,000 | + 3.1 % |
| 8 | Tianjin | CN | 22,170,000 | + 5.5 % |
| 9 | Jebel Ali | AE | 14,472,000 | + 3.6 % |
| 10 | Hong Kong | CN | 14,341,000 | - 14.0 % |
| 11 | Port Kelang | MY | 14,061,022 | + 6.3 % |
| 12 | Rotterdam | EU | 13,447,000 | - 7.0 % |
| 13 | Xiamen | CN | 12,550,000 | + 1.0 % |
| 14 | Antwerp-Bruges | EU | 12,528,000 | - 7.2 % |
| 15 | Tanjung Pelepas | MY | 10,480,537 | - 0.3 % |

Source: *Port authorities - * Results of Piraeus Container Terminal (Source: Cosco); ** Data over 7 months, from January to July 2024.*

(ii) Specifically, as of October 2024, approximately 70.2% (177 out of 252) of services to and from Malaysian ports are conducted via some form of operational cooperation, underscoring the critical role of VSAs in maintain service efficiency and connectivity.

(iii) Initial research findings indicate that VSA have demonstrated significant importance within the maritime industry across multiple decades. These agreements facilitate optimal deployment of vessels and equipment in response to substantial capital investments. Early analysis suggests VSA may create market access and service expansion opportunities, particularly benefiting new entrants and smaller carriers through strategic partnerships with larger carriers who maintain more comprehensive network capabilities.

(iv) While VSA promote cooperation between shipping liners, they are structured to maintain competitive market dynamics rather than create monopolistic conditions. Participating shipping liners continue to compete independently in crucial areas including pricing, schedules, marketing, and customer service. Although VSAs enable collaborative cost reduction and efficiency improvements, regulatory frameworks ensure they cannot be utilized to create unfair competitive advantages.

**(c) <u>The detrimental effect of the VSA on competition is proportionate to the benefits provided.</u>**

(i) Preliminary assessment indicates that VSA may enable individual carriers to expand their service coverage and increase service frequency for customers, though further analysis is needed to determine market-wide implications.

(ii) The analysis suggests that VSA arrangements could potentially lower market entry barriers and expansion costs for carriers, particularly benefiting smaller operators. Such arrangements may contribute to enhanced efficiency and competitiveness in ocean transportation services, potentially yielding benefits for customers and the broader economy.

**(d) <u>The VSA do not allow the liner operators to eliminate competition completely in respect of a substantial part of the liner shipping service.</u>**

(i) Initial findings suggest that the degree of concentration on major trade routes connected to Malaysia demonstrates moderate levels of market competition. Current market dynamics indicate that carriers actively compete across key parameters including pricing, service quality, scheduling flexibility, and service frequency. Market analysis indicates the liner shipping industry maintains robust competition across major trade routes. Recent Alphaliner data (October 2024) shows a relatively distributed market structure, with no single carrier commanding more than 20% of global market share. While global market analysis via Alphaliner data provides useful context, obtaining granular market share data specific to Malaysian trade routes presents certain limitations.

Public data may not fully capture the localised competitive dynamics, and carrier-specific route data for Malaysian ports is not consistently reported.

(ii) Therefore, shipping lines need to demonstrate that their vessel sharing agreements does not eliminate competition by providing detailed market analysis with clear data on market share distribution and the competitive landscape.

## F. Block Exemption by Other Jurisdictions

***Table 7:*** Block Exemption by Other Jurisdictions

| No | Competition Authority | Remarks |
|---|---|---|
| 1 | Competition and Consumer Commission of Singapore (CCCS) | • At present, the only block exemption in Singapore is the Competition Order, which is valid from 1 January<br>• 2025 until 31 December 2029 (5 years)<br>• Parties to liner shipping agreements must file their agreements with CCCS only when their aggregate market share exceeds 50%. |
| 2 | Hong Kong Competition Commission (HKCC) | • HKCC announced its decision to renew the block exemption order for vessel-sharing agreements (VSA) between liner shipping companies for four more years.<br>• The existing order, set to expire on 8 August 2022, will be renewed as a block exemption order (BEO) until 8 August 2026. |

| No | Competition Authority | Remarks |
|---|---|---|
| 3 | Japan Fair Trade Commission (JFTC) | • In Japan, shipping line operators are subject to the Antimonopoly Act (AMA), which the Japan Fair Trade Commission enforces.<br>• Unlike other jurisdictions, Japan does not have specific exemption guidelines for marine agreements under the AMA. To ensure compliance, shipping liner operators must verify that their agreements—such as vessel sharing and alliances—conform to AMA requirements. |
| 4 | Australian Competition and Consumer Commission (ACCC) | • The ACCC is working on developing a class exemption for ocean liner shipping. This initiative was put on hold in 2020 while the ACCC focused on regulatory activities related to the COVID-19 pandemic.<br>• A class exemption allows the ACCC to grant businesses exemptions from competition law for certain types of conduct that, while potentially risking breach of competition law, do not substantially lessen competition and are likely to result in overall public benefits.<br>• However, there is likely to be a strong case for pursuing work on a possible future class exemption without a |

| No | Competition Authority | Remarks |
|---|---|---|
| | | clear position set out in Part X[4] of the Competition and Consumer Act 2010 the CCA. |
| 5 | Commerce Commission New Zealand | • Previously, international shipping services were exempted from the Commerce Act 1986 and operated under a separate regulatory regime.<br>• The enactment of the Commerce (Cartels and Other Matters) Amendment Act 2017 repealed this broad exemption and replaced it with a more targeted exemption for specific vessel-sharing activities. |
| 6 | Federal Maritime Commission (FMC), United States | • Under the Shipping Act of 1984, vessel operating common carriers and marine terminal operators have the ability to engage agreements filed with the Federal Maritime Commission. These agreements cover activities such as vessel sharing agreements and discussion of terminal operations and fees.<br>• The Federal Maritime Commission maintains a library of active agreements. |

Source: MyCC secondary research

[4] Part X of the *Competition and Consumer Act 2010* (the Act) regulates international liner shipping of cargo to and from Australia. Liner cargo shipping is generally defined as shipping services operating on a regular trade route, with predetermined and publicly advertised schedules between advertised ports of call.

## G. Section 9 (b) of the Competition Act 2010

24. Pursuant to section 9 (b) of the Act, the Commission shall, prior granting a block exemption, the Commission is required to conduct a public consultation for a minimum period of thirty (30) days from the date of publication to allow for public submissions on the proposed block exemption. The Commission shall also give due consideration to any submission made.

25. The proposed consultation period is thirty (30) days, running from 27 May 2025 to 25 June 2025. Therefore, the Commission is inviting stakeholders to provide their comments, views and feedback during the public consultation period.

26. Stakeholder engagements with relevant ministries and government agencies such as the Ministry of Transport, the Ministry of Investment, Trade and Industry, the Ministry of Economy, Port Authorities, and others will be conducted during the public consultation period.