EXECUTIVE SUMMARY

PROPOSED RENEWAL 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. The Malaysia Competition Commission (Commission) is an independent body responsible for enforcing the Competition Act 2010 (the Act), which was implemented to create healthy competition which would, in turn, stimulate productivity and innovation, thus creating wider choices of products for consumers with better quality and reasonable prices.

2. Section 8(1) of the Act lays the foundation for the Commission to grant a Block Exemption to a category of an agreement under section 4 which satisfied the four criteria that are provided under Section 5 of the Act. Section 5 read as follows:

   (5) 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.*

3. Upon receiving the application for the block exemption under the Act, the Commission, shall conduct its assessment on whether the prohibition agreement satisfy all the requirements provided under section 5 of the Act. The onus lies on the Applicants to prove to the Commission that the exemption application cumulatively meets the requirements under section 5.

4. Prior concluding the assessment to any exemption application, the Commission are required by virtue of section 9 of the Act to conduct the public consultations and give any due consideration for any submission made before granting the block exemption.

5. The Commission, in granting a block exemption may impose any condition or obligation subject to which a block exemption shall have effect. The Commission may publish the decision of granting a block exemption in the Gazette.

B. Scope of the Renewal Block Exemption Application

6. At present, the only block exemption granted in Malaysia is the Vessel Sharing Agreements in respect of Liner Shipping Services through Transportation by Sea.

7. **The Scope of the Liner Shipping Services** can be defined as 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.

8. **The Liner Shipping Services shall not include** any inland transport for carriage of goods which is part of direct services provided by logistic provides, forwarders, depot operators, truckers, railroaders, off-dock consolidation facility, off-dock storage and warehousing services.

9. Meanwhile, **the scope of the Vessel sharing agreements** between liner operators in which the 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.

10. **The Vessel Sharing Agreement shall not include** any agreement or recommendation relating to rates and rates on transport users.

C. Past Applications of the Block Exemption Order

11. The application for the Block Exemption for Vessel Sharing Agreements in respect of Liner Shipping Services was started on 2014 by the Malaysia Shipowners Association (MASA), the Shipping Association of Malaysia (SAM) and the Federation of Malaysia Port Operators Council (FMPOC). Upon receiving the application, the Commission assessed the block application and decided to grant the exemption for **three years from 7 July 2014 until 6 July 2017**.

12. Upon expiry of the block exemption for the above said period, the Commission received the renewal application of the block exemption from MASA and SAM on 17 February 2017. Subsequently, the Commission has assessed and approved the renewal application for the block exemption for another **two years starting from 7 July 2017 to 6 July 2019**.

13. On 29 August 2018, the Commission received the renewal of the block exemption for the third time from MASA and SAM. The Commission thereafter has assessed and approved the renewal application for the block exemption for another **three years starting from 7 July 2019 to 6 July 2022**.

14. The past applications of the Block Exemption for Vessel Sharing Agreement in respect of Liner Shipping Services are summarised as below table:

No.	Applicants	Decision	Gazzeted Order
i.	Malaysia Shipowners Association (MASA) Shipping Association of Malaysia (SAM) Federation of Malaysia Port Operators Council (FMPOC)	Exemption granted for three years (3) for the VSA and VDA from 7 July 2014 – 6 July 2017	Gazette No. P.U. (A) 195/2014
ii.	Malaysia Shipowners Association (MASA) Shipping Association of Malaysia (SAM)	Exemption granted for a period of two years (2) for VSA and VDA effectively from 6 July 2017 until 7 July 2019	P.U.(A) 195/2017
iii.	Malaysia Shipowners Association (MASA) Shipping Association of Malaysia (SAM)	Exemption granted for three years (3) for the VSA and VDA from 7 July 2019 – 6 July 2022	P.U. (A) 314/2019

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

15. On 17 March 2022, the Commission received a renewal application of Block Exemption in respect of Liner Shipping Services for Vessel Sharing Agreement for MASA and SAM (the Applicants). The Applicant, for and on behalf of all liner shipping operators, hereby apply to the Commission for the following permanent relief from the prohibitions under Section 4 of the act:

i. That the 2019 BEO to be renewed;
ii. The scope of the 2019 BEO be revised whereby only the block exemption for Vessel Sharing Agreement ("VSA") is renewed;
iii. The term of the VSA block exemption be extended to period of five (5) years; and
iv. Some of holdover provisions in the current Block Exemption Order "information concerning pricing or tariff of the liner shipping services through transportation by sea" to be removed as the Vessel Sharing Agreement do not discuss or concern any charges.

E. Application to the Efficiency Exclusion

16. Prior to granting a block exemption, the Commission has to assess the renewal application and identifies that the exemption may generate net economic benefit, based on the criteria as set out in section 5 of the Act.

17. The assessment and proposed recommendation take into consideration views from the Commission's feedback sessions with key industry stakeholders such as industry associations, industry players (e.g., liners, freight forwarders, importers/exporters) and public sector agencies.

18. The Commission also considered the recent market developments in the liner shipping industry and the international regulatory landscape with respect to Vessel Sharing Agreements.

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

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

The Commission recognises that 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. As of to date, vessel sharing agreements improve the connectivity of Malaysia's port. Overall, there is 36% increase of container port traffic in Malaysia since the exemption granted to the VSA for the liner shipping services

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 liner. 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.

ii. **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.**

The potential restrictions on competition arising from vessel sharing agreements are necessary to achieve the efficiencies. The various aspects of vessel sharing agreements which may potentially be considered to restrict competition. Such restrictions are expected to eliminate or greatly reduce the efficiencies that flow from the vessel sharing agreements in liner shipping services.

iii. **The detrimental effect of the VSA on competition is proportionate to the benefits provided.**

The Commission also observed that VSAs could enable an individual carrier to offer broader service coverage and higher service frequency to its customers (though it is not clear that such benefits would arise in respect of the market as a whole).

Apart from that, the Commission is of the view that VSA arrangements could in principle decrease the costs for individual carriers of entering a new trade or expanding their existing service on a particular trade (especially where smaller carriers are concerned).

iv. **<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>**

Based on the assessment, the Commission finds out that the degree of concentration on major trade routes with respect to Malaysia is relatively moderate and most of the Liners still compete for customers on such key parameters as price, services, schedules and frequencies of the services.

F. Section 9 of the Competition Act 2010

20. In accordance with section 9 of the Act, before granting a block exemption, the Commission shall publish its recommendation of the proposed block exemption and give at least thirty days from the date of publication to allow submissions to be made by members of the public. The Commission shall also give due consideration to any submission made.

21. Therefore, the Commission is inviting stakeholders to provide their comments, views, and feedback on the Proposed Renewal of the Block Exemption for Vessel Sharing Agreements in respect of Liner Shipping Services.