

SIARAN BERITA

**PENGECUALIAN BLOK BERSYARAT
BAGI PELAYARAN TETAP OLEH MyCC
TELAH DIWARTAKAN**

KUALA LUMPUR, 07 Julai 2014 – Pengecualian Blok bersyarat (BEO) yang dikeluarkan oleh Suruhanjaya Persaingan Malaysia (MyCC) bagi perjanjian-perjanjian pelayaran tetap pada bulan Disember tahun lepas kini telah diterbitkan didalam Warta pada 4 Julai 2014 dan telah mula berkuatkuasa hari ini. Perjanjian-perjanjian pelayaran tetap ini adalah berkaitan dengan Perjanjian Perkongsian Vesel Dan Perjanjian Perbincangan Sukarela yang dimeterai dalam Malaysia atau mempunyai kesan terhadap perkhidmatan pelayaran tetap di Malaysia. BEO ini telah diberikan dibawah Seksyen 8 Akta Persaingan 2010 (Akta) setelah MyCC mendapati semua keperluan dibawah Seksyen 5 Akta Persaingan 2010 telah dilaksanakan.

BEO ini akan berkuatkuasa selama tiga tahun dari tarikh ianya diwartakan atau sehingga ianya dibatalkan oleh MyCC. Satu kajian semula mengenai BEO akan dijalankan oleh MyCC selepas dua tahun dari tarikh ianya berkuatkuasa.

BEO hanya diguna pakai oleh perkhidmatan pengangkutan yang disediakan oleh pengendali-pengendali pelayaran tetap bagi pengangkutan laut dan tidak termasuk apa-apa pengangkutan barangan pedalaman yang merupakan sebahagian daripada pengangkutan terus termasuk perkhidmatan disediakan oleh penyedia logistik, penghantar, pengendali-pengendali depot, pemandu lori, pengendali kereta api, penyedia pekhidmatan kemudahan penyatuan

UNTUK TERBITAN SEGERA MEJA BERITA/EKONOMI



SURUHANJAYA PERSAINGAN MALAYSIA
MALAYSIA COMPETITION COMMISSION

luar dok, dan penyedia perkhidmatan penyimpanan luar dok dan pergudangan, sama ada entiti-entiti sedemikian bersepakat dengan pengendali-pengendali kapal. Tiada unsur penetapan harga atau tarif dalam sebarang bentuk yang dibenarkan dalam perkhidmatan-perkhidmatan yang dikecualikan.

BEO tidak mengecualikan atau memberikan imuniti bagi sebarang penyalahgunaan kedudukan dominan di bawah seksyen 10 Akta Persaingan 2010.

Keputusan MyCC bagi memberi BEO adalah berdasarkan kajian yang dijalankan pada industri dan selepas mengadakan rundingan dengan pihak-pihak berkepentingan bersama agensi-agensi kerajaan yang berkaitan seperti Kementerian Kewangan Malaysia (KKM), Kementerian Pengangkutan (KP), Kementerian Perdagangan Antarabangsa dan Industri (KPAI), dan Unit Perancang Ekonomi (UPE). Satu siri rundingan awam telah dijalankan dalam masa beberapa bulan pada tahun 2013 dan pendapat-pendapat dari semua pihak-pihak berkepentingan telah diambil kira dalam penyediaan BEO ini.

BEO ini adalah susulan daripada permohonan pengecualian blok yang telah dibuat oleh *Malaysia Shipowners Association (MASA)*, *Shipping Association of Malaysia (SAM)* dan *Federation of Malaysian Port Operators Council (FMPOC)* yang telah difailkan kepada MyCC sebelum ini.

Bagi maklumat lanjut mengenai MyCC, sila layari www.mycc.gov.my.

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Unit Komunikasi Korporat
Suruhanjaya Persaingan Malaysia (MyCC)
Suruhanjaya Persaingan Malaysia (MyCC)

Ditubuhkan pada Jun 2011, MyCC ialah satu badan bebas bertanggungjawab untuk menguatkuasakan Akta Persaingan 2010, yang dilaksanakan untuk menggalakkan persaingan sihat yang seterusnya akan merangsang produktiviti dan inovasi, lantas mewujudkan pilihan produk atau servis yang lebih banyak kepada pengguna dan kualiti yang lebih baik pada harga yang berpatutan.

Akta ini digunapakai kepada semua aktiviti komersil yang ditanggung didalam dan diluar Malaysia yang boleh menjejaskan persaingan di pasaran Malaysia. Ia memberikan satu rangka kerja kawal termasuk kuasa menyiasat, menghakimi dan mengenakan penalti-penalti kepada pesalah undang-undang persaingan.

Untuk maklumat lanjut tentang Akta dan MyCC, sila rujuk laman web www.mycc.gov.my.

ANNEXE A

Nota kepada Editor:

Di bawah merupakan maklumat mengenai Seksyen 4, 5, 8 dan 10 daripada Akta Persaingan 2010. Butir-butir lanjut bagi BEO seperti definisi, keperluan-keperluan bagi Seksyen 5 dan syarat-syarat boleh digunakan dalam ***Explanatory Note*** (muka surat 11) di bawah.

Perjanjian mendatar dan menegak yang dilarang

4. (1) Suatu perjanjian mendatar atau menegak antara perusahaan adalah dilarang setakat yang perjanjian itu mempunyai matlamat atau kesan menghalang, menyekat atau mengganggu persaingan secara signifikan dalam apa-apa pasaran bagi barangan atau perkhidmatan.

(2) Tanpa menjejaskan keluasan subseksyen (1), suatu perjanjian mendatar antara perusahaan yang mempunyai matlamat untuk—

(a) menetapkan, secara langsung atau tidak langsung, suatu harga belian atau jualan atau apa-apa syarat perdagangan yang lain;

(b) berkongsi pasaran atau punca bekalan;

(c) membataskan atau mengawal—

(i) pengeluaran;

(ii) saluran keluar pasaran atau capaian pasaran;

(iii) pembangunan teknikal atau teknologi; atau

(iv) pelaburan; atau

(d) melakukan tipuan bida,

adalah disifatkan mempunyai matlamat atau kesan menghalang, menyekat atau mengganggu persaingan secara signifikan dalam apa-apa pasaran bagi barangan atau perkhidmatan.

(3) Mana-mana perusahaan yang merupakan suatu pihak kepada suatu perjanjian yang dilarang di bawah seksyen ini adalah bertanggungjawab bagi pelanggaran larangan itu.

Pelepasan Liabiliti

5. Walau apa pun seksyen 4, suatu perusahaan yang merupakan suatu pihak kepada suatu perjanjian boleh melepaskan liabilitinya bagi pelanggaran larangan di bawah seksyen 4 berasaskan sebab-sebab yang berikut:

(a) terdapat faedah yang signifikan yang dapat dikenal pasti dari segi teknologi, kecekapan atau sosial yang berbangkit daripada perjanjian itu;

(b) faedah itu tidak dapat semunasabahnya diberikan oleh pihak-pihak kepada perjanjian itu tanpa perjanjian itu mempunyai kesan menghalang, menyekat atau mengganggu persaingan;

(c) kesan buruk perjanjian itu pada persaingan adalah bersekadar dengan faedah yang diberikan; dan

(d) perjanjian itu tidak membenarkan perusahaan yang berkenaan untuk menghapuskan persaingan sama sekali berkenaan dengan sebahagian besar barangan atau perkhidmatan.

Pengecualian blok

8. (1) Jika perjanjian-perjanjian yang tergolong dalam suatu kategori perjanjian tertentu berkemungkinan, pada pendapat Suruhanjaya, merupakan perjanjian-perjanjian yang baginya seksyen 5 terpakai, Suruhanjaya boleh, melalui perintah yang disiarkan dalam Warta, memberikan suatu pengecualian kepada kategori perjanjian tertentu itu.

(2) Suatu pengecualian yang diberikan di bawah seksyen ini disebut sebagai “pengecualian blok”.

(3) Suatu perjanjian yang tergolong dalam suatu kategori yang dinyatakan dalam suatu pengecualian blok adalah dikecualikan daripada larangan di bawah seksyen 4.

(4) Suruhanjaya dalam memberikan pengecualian blok boleh mengenakan apa-apa syarat atau obligasi yang tertakluk kepadanya suatu pengecualian blok itu berkuat kuasa.

(5) Suatu pengecualian blok boleh memperuntukkan bahawa—

(a) jika terdapat suatu pelanggaran syarat yang dikenakan oleh pengecualian blok itu, Suruhanjaya boleh, dengan notis secara bertulis, membatalkan pengecualian blok itu berkenaan dengan perjanjian itu dari tarikh pelanggaran itu;

(b) jika terdapat suatu kegagalan untuk mematuhi obligasi yang dikenakan oleh pengecualian blok itu, Suruhanjaya boleh, dengan notis secara bertulis, membatalkan pengecualian blok itu berkenaan dengan perjanjian itu;

(c) jika Suruhanjaya berpendapat bahawa suatu perjanjian tertentu bukan suatu perjanjian yang baginya seksyen 5 terpakai, Suruhanjaya boleh, dengan notis secara bertulis,

membatalkan pengecualian blok itu berkenaan dengan perjanjian itu dari apa-apa tarikh yang ditentukan oleh Suruhanjaya;

(d) pengecualian blok itu hendaklah terhenti berkuat kuasa pada penghujung tempoh yang dinyatakan dalam perintah itu; atau

(e) pengecualian blok itu hendaklah berkuat kuasa dari suatu tarikh yang lebih awal daripada tarikh perintah itu dibuat.

Explanatory Note

COMPETITION (BLOCK EXEMPTION FOR VESSEL SHARING AGREEMENTS AND VOLUNTARY DISCUSSION AGREEMENTS IN RESPECT OF LINER SHIPPING) ORDER 2013

1. Introduction

1.1 This explanatory note is not a substitute for the Block Exemption Order (BEO). Persons in doubt about how they and their commercial activities may be affected by the BEO may wish to seek independent legal advice.

1.2 An application for a block exemption was submitted by the Malaysia Shipowners Association (MASA), the Shipping Association of Malaysia (SAM) and the Federation of Malaysia Port Operators Council (FMPOC) on 16 December 2011 pursuant to section 8 of the Competition Act 2010. The applicants sought a 5

year block exemption to be granted by the Malaysia Competition Commission (Commission) for liner shipping agreements in respect of Vessel Sharing Agreements (VSA) and Voluntary Discussion Agreements (VDA) entered into by liner shippers in respect of the entire transport chain including intra-modal transport services.

1.3 This BEO granted by the Commission is made under section 8 of the Competition Act 2010 and exempts VSA and VDA in respect of liner shipping. The Commission has granted the block exemption with conditions under section 8 of the Act and the Commission is satisfied that all the four requirements under section 5 has been fulfilled:

(a) There are significant identifiable efficiency benefits arising from the VSA and VDA

High investment in vessels and operating cost for services require the need to have co-operation between liner operators to maintain the quality of services that is able to meet frequency and regularity which are the defining characteristics of scheduled shipping services for the benefit of the industry, including shippers. VSA and VDA allow liner operators to provide regularised scheduled services between large number of ports and many more destinations worldwide.

(b) The benefits could not reasonably have been provided by the parties to the VSA and VDA without the agreement

having the effect of preventing, restricting or distorting competition

The nature of the liner shipping industry is such that its ability to provide scheduled services necessarily requires agreements among companies which would normally be competitors. VSA and VDA enable the liner shipping industry to continue investing billions of dollars in ships, new vessel services, equipment, infrastructure, information technology and other technological innovations in order to be able to continue providing liner shipping services. Scheduled and regular services cannot be provided at lower costs and regularity unless there is an agreement between competitors. These benefits could not have been provided unless there are agreements in place between liner operators.

- (c) The detrimental effect of the VSA and VDA on competition is proportionate to the benefits provided

There has to be stability in the trade and regular services to meet the latent demand of shippers for services to include shipping small lots of cargoes to various destinations in the network of scheduled services. The detrimental effect of the agreements between the liner operators to provide such services is countered by the benefits brought about by such agreements.

Regularised and scheduled services allow for greater

frequencies, lower costs and availability for the shippers regardless of size and regularity of shipments.

- (d) The VSA and VDA do not allow liner operators to eliminate competition completely in respect of a substantial part of the liner shipping services

The BEO does not allow any form of price fixing or tariff agreements or recommendation between the liner operators. This is to ensure that the liner operators can provide independent rates to shippers and compete on pricing. Confidentiality of service contracts between operators and shippers can also be maintained as there can be no compulsion in the VSA or VDA to share such information.

These agreements do not eliminate competition completely as any party may individually fix rates or prices and they are free to compete on pricing and level of service.

Further to this, the BEO does not exempt or provide immunity in respect of any abuse of a dominant position under section 10 of the Act.

- 1.4 All agreements relating to the exempted services shall be lodged with the Commission to ensure compliance of the conditions imposed. Relevant parts of the documents shall also be made available and easily accessible to the public.

1.5 In the course of assessing the block exemption application filed by the Applicants, the Commission had carefully considered many factors which would contribute to the determination of the Commission's decision. On this note, the Commission engaged various stakeholders to get their feedback including the relevant government agencies in particular, the Ministry of International Trade and Industry (MITI), the Ministry of Transport (MOT), the Ministry of Finance (MOF) as well as the Economic Planning Unit (EPU). A series of public consultations were also held in Kuala Lumpur, Penang, Kota Kinabalu, Kuching and Johor Bahru which were aimed at obtaining feedback from the other stakeholders including the freight forwarders, hauliers as well as manufacturers.

1.6 Apart from the Applicants, other stakeholders who had provided written responses on the block exemption application during the public consultations are listed as below:

- a) DIC Compounds (Malaysia Sdn. Bhd.);
- b) Malaysia Steel and Metal Distributors' Association;
- c) Malaysia Hardware, Machinery & Building Material Dealers' Association;
- d) Federation of Malaysia Manufacturers;
- e) Malaysian International Chambers of Commerce and Industry;
- and
- f) Federation of Sabah Manufacturers (Jointly submitted by):

- Sabah United Chinese Chamber of Commerce & Industry;
- Kota Kinabalu Chinese Chamber of Commerce & Industry;

- Sabah Timber Industry Association;
- Sabah Furniture Association;
- Sabah Housing and Real Estate Developers Association;
- Malaysian International Chamber of Commerce & Industry, Sabah;
- Malaysian Plastic Manufacturers Association, Sabah;
- Federation of Malaysian Manufacturers Sabah Representative Office;
- Kadazandusun Chamber of Commerce & Industry;
- Kota Kinabalu Forwarding Agents Association;
- Persatuan Pengusaha Lori Kontena Kota Kinabalu;
- Sabah West Coast Lorry Transportation Association;
- Malaysian Association of Tour and Travel Agents;
- Kota Kinabalu Hardware Machinery & Building Material Traders Association, Sabah;
- The Institution of Engineers, Sabah Branch;
- Association of Consulting Engineers Malaysia - Sabah Branch;
- Consumer Affairs & Protection Society of Sabah;
- Sabah Bakery Association;
- Sabah Confectionery & Bakery Association;
- Sandakan Coffee Association; and
- KKIP Investors Council.

1.7 After taking into consideration all the feedback and findings, the Commission has agreed to grant the block exemption subject to the following additional conditions.

1.8 The BEO granted by the Commission however is not for the whole of the intra-modal transport services (including the land carriage of goods and warehousing services) as requested by the Applicants. In addition, no element of pricing or tariff in any form is allowed in respect of these services.

- 1.9 The BEO shall only apply to transport services provided by liner operators in respect of ocean transport and shall not include any inland carriage of goods occurring as part of through transport including services provided by logistics providers, forwarders, depot operators, truckers, railroads, off-dock consolidation facility service providers, and off-dock storage and warehousing service providers, whether or not such entities are affiliated with liner operators.

2. Commencement and Duration

This BEO shall come into force on the date it is published in the Gazette and shall continue in force for three years from the same date or until the BEO is cancelled by the Commission as provided under section 8(5) of the Act. A review of the BEO will be conducted by the Commission after two (2) years from the date of its commencement.

3. Definitions

Liner operator

- 3.1 A liner operator is defined as an enterprise which provides liner shipping services and is a party to a VSA and/or VDA.

Liner shipping services

- 3.2 Liner shipping services is defined as the containerised and other scheduled transport of goods by ocean carriers 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 such operators to any transport user against payment. Full vessel chartering arrangements with customers, such as tanker and bulk vessel operations are excluded from this BEO.

- 3.3 It shall only include services provided by liner operators in respect of ocean transport and excludes all inland carriage of goods occurring as part of through transport including services provided by logistics providers, forwarders, depot operators, truckers, railroads, off-dock consolidation facility service providers, and off-dock storage and warehousing service providers, whether or not such entities are affiliated with liner operators. Such services of inland carriage of goods shall be subject to the Act.

VSA

- 3.4 VSA means an agreement in which the members of such agreement shall only discuss and 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. The agreement shall not include any agreement or recommendation relating to rates and tariff on transport users.

VDA

3.5 VDA means an agreement in which the liner operator members to such agreements may exchange and review market data, supply and demand forecasts, international trade flows and industry trends, and discuss and agree to such similar commercial issues.

4. Exempted VSA and VDA

4.1 To qualify for exemption, the parties of the VSA and VDA must adhere to the conditions set out under paragraph 4(1) of the BEO.

4.2 VSA

(i) shall only be for the sharing of vessels, joint operation of vessel services, exchange or charter of vessel space between the liner operators;

(ii) shall not include any inland carriage of goods occurring as part of through transport including services provided by logistics providers, forwarders, depot operators, truckers, railroads, off-dock consolidation facility service providers, and off-dock storage and warehousing service providers, whether or not such entities are affiliated with liner operators;

(iii) shall be for a reasonable period of time;

(iv) shall not contain any element of price fixing or price or

tariff recommendation by the parties imposed on the transport users;

- (v) shall not require the disclosure, whether to other liner operators or otherwise, of confidential information concerning service arrangements by the liner operators; and
- (vi) shall allow any party to the agreement on the basis of an individual to enter into any confidential contract and to offer his own service arrangements and pricing.

4.3 VDA

- (i) shall only be for the sharing of information relating to the industry and shall be non-binding on the parties;
- (ii) shall not include any inland carriage of goods occurring as part of through transport including services provided by logistics providers, forwarders, depot operators, truckers, railroads, off-dock consolidation facility service providers, and off-dock storage and warehousing service providers, whether or not such entities are affiliated with liner operators;
- (iii) shall be for a reasonable period of time;
- (iv) shall not contain any element of price fixing or price recommendation by the parties imposed on the transport

users;

- (v) shall not impose any penalty or financial loss imposed on any party departing from the agreement;
 - (vi) shall allow any party to the agreement to withdraw from the agreement on giving a reasonable period of notice;
 - (vii) shall not require the disclosure, whether to other liner operators or otherwise, of confidential information concerning service arrangements by the liner operators; and
 - (viii) shall allow any party to the agreement on the basis of an individual to enter into any confidential contract and to offer his own service arrangements and pricing.
- 4.4 The VSA and VDA do not require liner operators to mandatorily adhere to a tariff and there cannot be any obligation on any party to disclose confidential information concerning the individual confidential contracts and their individual service agreements.
- 4.5 These conditions have been included in the BEO to promote competition between parties to a VSA and VDA, and limit the extent of anti-competitive conduct that liner operators may engage in through the VSA and VDA.

5. Cancellation of the Exemption

- 5.1 Paragraph 5 of the BEO provides for the cancellation of the block exemption in respect of the VSA and VDA. This is in line with the provisions of section 8(5) of the Act.
- 5.2 Where there has been a breach of any conditions imposed in the BEO, the Commission may proceed to take relevant action to cancel the BEO pursuant to section 8(5) of the Act.
- 5.3 Where there has been a failure to comply with an obligation imposed in the BEO or where the Commission finds in a particular case that the VSA and VDA have effects which are incompatible with the provisions of section 5 of the Act, the Commission may cancel the exemption from such date as the Commission may specify.