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24 March 2016

Ms Rose Webb
Chief Executive Officer
Competition Commission
Room 3601, 36/F., Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong

Dear Rose,

<u>Application for a block exemption order under section 15 of the Competition Ordinance from the Hong Kong Liner Shipping Association</u>

The Hong Kong General Chamber of Commerce ("HKGCC") is pleased to offer its views in relation to the Hong Kong Liner Shipping Association's ("HKLSA") application for a block exemption order ("BEO") in relation to certain liner shipping agreements.

We note that Singapore has recently decided to extend the BEO for liner shipping agreements for another five years until 31 December 2020. This extension was made under specified conditions and obligations that pertain mainly to the "*non-mandatory adherence to tariffs, and allowing member liner operators to enter into individual confidential contracts and offer their own service agreements*", among other considerations.

Similarly, in the United States, under the Ocean Shipping Reform Act, antitrust exemptions for liner shipping conferences are maintained but conference participants are allowed to enter into confidential service contracts with shippers.

On the other hand, the EU takes a stricter approach, and has limited its BEO to consortia (broadly speaking, the equivalent of Vessel Sharing Agreements ("VSAs")) and any "hardcore" restrictions such as pricing discussions are prohibited.

With respect to VSAs, as pointed out in the HKLSA's summary, these can facilitate the sharing of vessels among liners to provide more frequent sailings and cost savings. Efficiency considerations aside, it is also important for the Commission to consider the issues of network, coverage and frequency of services that can be offered by VSAs. Presently, transhipment takes up the lion's share of cargo throughput in Hong Kong. Transhipment cargo can be quite volatile given its discretionary nature. In other words, transhipment cargo can "relocate" fairly easily to another port. The loss of transhipment cargo can have quite serious implications to our economy because it also affects the connectivity and availability of liner shipping services to Hong Kong shippers not to mention the knock-on effects on the wider economy in the form of business and job losses. Accordingly, we would suggest that the Commission consider exempting VSAs to maintain Hong Kong's status as a transhipment hub.

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With regard to Voluntary Discussion Agreements ("VDAs"), which involve closer cooperation including pricing issues, we recommend that the Commission looks closely at the extent to which the agreements reduce competition, whether the harm to competition is outweighed by efficiencies, and whether the restrictions on competition are necessary to generate those efficiencies. This is consistent with the Commission's approach to assessing exemption applications generally as set out in its guidelines. From the non-confidential summary of HKLSA's application for a BEO, there is insufficient information to make an assessment of these issues, but the Commission will no doubt be in a position to do so.

In sum and based on the considerations as outlined above, we support the HKLSA's BEO application for VSA exemption within the meaning of liner shipping agreements. On the other hand, SMEs, comprising the majority of the HKGCC's members, would be affected by VDA exemption. We would therefore support such exemption if it can be shown that any harm to competition this may bring is clearly outweighed by efficiencies, which benefit Hong Kong.

Yours sincerely,

Shirley Yuen
CEO