

4 August 2008

JSA Comments on the Public Consultation Paper
for Hong Kong's Competition Law

The Japanese Shipowners' Association ("JSA") appreciates this opportunity to submit its comments on the Public Consultation Paper for a Competition Law published by the Hong Kong Commerce and Economic Development Bureau. The JSA supports the comments separately submitted by the International Chamber of Shipping, the Hong Kong Shipowners' Association and the Hong Kong Liner Shipping Association, which includes several JSA member companies. In addition to those comments, the JSA respectfully outlines below its basic position on antitrust immunity for carrier agreements (hereafter referred to as the "carrier agreement system").

The JSA is a nation-wide shipowners' association consisting of 108 Japanese shipping companies. A large number of the JSA's member shipping companies are engaged in the transportation of cargo between Hong Kong and many other countries throughout the world, including Japan. Many of these companies are parties to vessel sharing agreements, conferences, and other cooperative arrangements amongst shipping lines. These lines have often made significant investments and structured their business operations based on the ability to participate in these types of cooperative arrangements. The JSA has a substantial interest in Hong Kong's Competition Law as the members of the JSA will be directly affected by its application.

(1) Certain long-standing and widely accepted international practices in the international shipping industry should be granted a block exemption.

Carrier agreements with respect to rates, charges, and operational matters have historic origins dating back to the 1870s, and still play a vital role in the shipping industry today. Even if an agreement or activity would arguably be prohibited by a general competition law or regulation, the JSA believes that these agreements should be exempted as being in the public interest of Hong Kong and as a matter of international comity, particularly with other key Asian trading partners. Cooperative agreements amongst carriers are a long-standing

practice and are widely accepted in international trade. They have been permitted to operate under Hong Kong's laws for over a century and have served the Hong Kong economy well. It would neither be sensible nor fair for this practice to be abruptly declared unlawful.

There are many cases in which shipping lines have made very large investments of capital in facilities, vessels and equipment in reliance on the continuation of a long-standing regulatory framework. In addition, their customers, many of whom would be involved in international trade, may also have managed their business operations in reliance on the continued existence of these practices.

The great majority of countries that have studied this issue have all concluded that the carrier agreement system is necessary and beneficial to the international trading system and national economies. Amongst these countries are Singapore, the United States, Canada, Australia, South Korea, Japan and others. Furthermore, the Chinese Government has clearly stated in recent official meetings with foreign governments that the regulations of the People's Republic of China on International Maritime Transportation, which recognise and authorise carrier cooperative agreements in China, would remain in place after the Chinese Anti-Monopoly Law went into effect on 1 August 2008.

Equity and international comity, therefore, require that such practices should be presumed to warrant full block exemption status under the new law unless it can be clearly and affirmatively shown that they have not facilitated benefits and efficiencies for the Hong Kong economy, and that they unduly and unreasonably impair competition and consumers' benefits.

The JSA believes that this common sense approach would avoid disruptions that could be harmful to the economy of Hong Kong. It would also be consistent with Hong Kong's national interests since it would foster international comity by avoiding conflicts of activities that are authorised under the laws of most of Hong Kong's major trading partners, such as the US, Canada, Japan, Singapore and Australia.

(2) JSA's fundamental stance on antitrust immunity for the carrier agreement

system can be summarised as follows.

The current liner shipping business established under the carrier agreement system contributes to stable freight rates and, as a result, enables member shipping companies of carrier agreements such as conferences, discussion agreements and consortia to save significant costs in providing reliable liner shipping services and improving their service quality and the level of efficiency.

This has particularly been the case over the past 10 years in which the liner shipping industry has had to invest huge sums years in advance to meet unknown growth levels in containerized cargoes that exceeded general GDP growth by almost 300%. The carrier agreement system has thus been essential for the whole maritime trading industry, including carriers as well as shippers who benefit from high-quality shipping services. In contrast, ending the existing system would not only risk inconsistency with many other Asian economies, but it would also risk destructive competition among carriers, which will set freight rates far below costs and seriously weaken the ability of carriers to invest in ships and other trade infrastructures required to meet the growing demands for ocean transportation. Such competition may also result strong pressure to consolidate and an oligopolistic situation in ocean shipping that would bring negative consequences for the whole trading industry, such as fewer service options, reduced efficiency and lower quality services.

(3) Conclusion

For the reasons set forth in above comments, the JSA sincerely requests that the Government of Hong Kong drafts the Competition Law and its detailed enforcement regulations which grant a block exemption for all types of carrier agreements, such as conferences, voluntary discussion agreements and consortia.
