

Study on the Competition Norms for the Liner Shipping Industry

Abstract

Key Words: Shipping Conference, Strategic Alliance, Liner Shipping Industry, Fair Trade Act

The liner shipping sector (involved in the transportation of final and semi-final products such as computers, textiles and a miscellany of manufacturing output) is highly competitive with prices (freight rates) fluctuating wildly even in the course of a single week. Under the competition pressure, carriers seek to form shipping alliance or set up cooperative agreements in order to expand network, increase supply, or increase the flexibility of assigning voyage. The shipping joint venture types include Shipping Conference, Tariff Stabilization Agreement, Strategic Alliance, etc..

The objectives of this study includes the following: (1) To understand the operating models of the liner shipping operators and the whole picture of market competition. (2) To survey and investigate the competition norms and practical status for the comparative legislation of the major countries. (3) To study the specific competition issues and to conduct the integrative competition analysis for the international liner shipping industries. (4) To propose legal framework reform and specific suggestions for Taiwan Fair Trade Commission.

From the perspectives of industrial development, comparative legislation, industry practice, economic evaluation, we study the competition norm for the liner shipping industry. From the industrial development perspective, there are

three biggest liner shipping alliances (2M, OCEAN Alliance, THE Alliance) formed by international shipping carriers in 2017. These shipping alliances are increasing their market share at the expense of the remaining smaller players. Although this process is not new, it has gained strength in their negotiation ability in dealing with customers and is particularly building entry barriers in the ocean going shipping routes. The shipping alliances would have great impact on the two biggest shipping companies in Taiwan (Yang Ming Marine and Evergreen Line with transport capacity 2.7% and 5% in 2016 individually), who have no right of speech and core decision-making power in the shipping alliances. The competition policy on the shipping alliance would not only affect the competitiveness of the industrial development of the shipping liner industry in Taiwan, but it would affect our port competitiveness in that the major container liner shipping routes could be reduced and the manufacturers with heavy reliance on the liner shipping would have to pay higher transportation cost.

From the legal framework perspective, the container liner shipping market used to be characterized by a variety of forms of cooperation, resulting in a need for a considerable degree of regulation. However, this all changed with the banning of conferences. Instead, there is a general trend that competition law is playing increasing important role in the industry, though there are still discrepancy in formulation and implementation in terms of the substantive content of the reform among different countries. In the policy context, the competition issues are provisioned in the Shipping Acts following closely to the provisions set forth by the International Associations and International Shipping Agreements. As for the provisions on the exemption of competition law of the maritime transport industry, the definition of concerted action in Article 14 of the Fair Trade Act should have covered the aforementioned various maritime shipping alliances, contracts, agreements or alliances. The permission of an exemption is the stipulation of Article 15 of the Act, that it

must have one of the circumstances listed in the first item of the article, and the key issue still lay on whether it is to be beneficial to the overall economy and public interest.

From the practical perspective, some shipping transactions still contain the essence and risky behavior from oligopoly market behavior. The issues and risks from these oligopoly market behaviors should particularly be monitored by the competition authorities. Vessel Sharing Agreements (VSAs) involve agreements between competitors in the liner shipping industry to cooperate on certain aspects of their operations. VSAs would involve less risks in concerted action, though some of this cooperation could potentially lead to competition concerns, particularly regarding the sharing of capacity and/or coordinating of the respective services of the parties. Voluntary Discussion Agreements (VDAs) consist of information sharing agreements between independent competitors in the liner shipping industry which cover particular trades. In this context, VDAs may give rise to significant competition concerns.

The present market, despite the existence of cooperation agreements, is typically a competitive environment where supply grows stronger than demand, resulting in declining freight rates. For the specific competition issues in the liner shipping industry, since the amendment of the Shipping Acts 2013, Fair Trade Commission is designated to be the competition authority. The proposals or behavior had been permitted or documented for future reference under the Shipping Acts should be re-examined according to the Fair Trade Act for indeed implementing law enforcement.