

Date: June 19, 2011

To: 立法會 <競爭條例草案>委員會

各位尊貴的議員，雖然本人在早已完結的公開諮詢有表達意見，但見最近報導條例立法無望而感着緊，故再為最近數年來發生不斷，在歐盟、美國、澳洲、新西蘭對航空和海輪公司進行的反壟斷指控補充意見，尤其抗議葉劉淑儀議員的謬論。

葉劉議員稱香港是自由貿易地方，與其草案被商界改得體無完膚，倒不如乾脆撤回。我祇問葉劉議員一句，香港證監和交易所為何要為對做市有嚴格條例監管？葉劉議員可否向全世界推銷，香港證券市場好自由、無皇管架。睇吓能否因此引來海外蜂擁投資？又請問尊貴的詹培忠議員，要為他何操守負責入獄？
 [REDACTED] 最諷刺的是她曾硬銷過 23 條。真不知呢啲係乜野人。

附上一篇有關 anti trust law 的報導。其實最近幾年屢有類似的海外報導，表現先進國家法制成熟，這叫做文明，葉劉議員你懂不懂？文明的相反是野蠻落伍。所以我會概論，香港商業社會仍在蠻荒狀態，持份者可按自身利益任意妄為。一些人像葉劉議員的，外表打扮得莊重，還曾留學美國，
 [REDACTED] 其實在這種營商環境，自己吃過多少虧也不知。例如附上文章提到的 liner conference 船公司公會。Liner conference was first used on the Britian-Calcutta trade in 1875. The object of the conference system is to regulate uneconomic competition. 意即反對競爭。但很不幸，大船公司所組成的公會在香港也進行活動，在它們擁有及控制大部船位的同時，向公眾推銷說因為有著較穩定的艙位和船期，而收取高昂的運費，但現實非公會船公司的服務沒兩樣。For more than 130 years shipping companies had been able to organize themselves into so called "Liner Conference" to decide the conduct of their business agreeing, amongst other things, how much capacity they should make available, the schedules they would offer and the prices they would charge.

Besides, 大船公司還藉"liner conference 正式結構形式"和"非結構協議模式"來榨取多項附加費、手續費與文件費等。我認為最嚴重者莫過於欺騙超過一整年代的閘口費。在九十年代以前直至千禧年代，the so-called 公會船對出口歐洲貨櫃收取 HK\$600/20 呎櫃和 HK\$650/呎櫃閘口費，但船公司是項係全無成本的。以每天出口歐洲最保守數量估計，這些公會船就可從付貨人騙去 HK\$2 百萬，一年是 7 億 3 千萬港元。某些尊貴的議員從事出口貨物事業的，你們無原無故付了多少閘口費也不知哩。Furthermore, 這種在香港沒有法律管的行為，

除了削弱出口商盈利和競爭力外，還引起社會不穩。因為其他香港以及珠三角的小碼頭和貨倉，有樣學樣收取什麼關口費、登記費等，眼見門口祇有一輛貨車提貨，亦要求這些額外名目收費，加上停車場費和本身真正車運\$350 成本，全部加起來，來提貨的貨車公司便要向客戶開單超過一千元。此曾引起貨車事隔數年先後在香港屯門和廣州連續兩天罷駛。

另外，各船公司又集體徵收燃油附加費 BAF(bunker adjustment factor)、peak season surcharge、port congestion surcharge、currency adjustment factor、yen appreciation surcharge、port security charge、ISPS、container imbalance charge，琳瑯滿目不能盡錄，不過最奇特要算 Emergency booking charge 了。各位尊貴的議員可參考船公司網頁，就能發覺外國比較香港和中國的本地費用項目少很多，單計文件費中港 HK\$300/RMB300 跟歐洲已經差不多，但中港加上 telex release fee HK\$300 or RMB300，總數已多於先進國家，一單貨的最基本文件費，已等於一個大陸工人半月人工。

以上提到的燃油附加費一項，在近數年以來已令十多家航空公司在先進國家受到制裁，幾位職員甚至被監禁，可想而知其嚴重性。不過莫過於此的是操控運費，這點現職香港機管局行政總裁的許漢忠定很清楚，若果他願意的話，他可提供在港龍工作時候，空運業是怎樣操縱運費。另一熱門人選當之是<建華亂港>的現任政協副主席、前任特首董先生，他的 OOCL 在附上文章內容，是家公會船，無端賺去全世界很多錢。我不知閣下有否欠董生的，但我肯定佢間公司欠世界很多。。

花無半日紅，各位尊貴的議員應知今年香港出口倒退，中國增長放緩，廣東省外向型經濟持續收縮，原因可能是人民幣引致的通脹。不論怎樣，香港仍可慶幸的是法治環境，懇請各政治背景的議員勿放棄或替市民放棄，儘管要對當權者俯首稱臣，愚忠是無必要的。況且國家能給予你的十數億平價人口資源，不是領導人自己生出來的，而且如 Apple、Walmart 外國公司也同樣享受這資源。

Yours faithfully,
Kiwi Chan



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Monday May 23, 2011

In anti-trust law we trust

COMMENT

By NAZERY KHALID

IT was reported recently that the big boys in the container shipping industry were among the companies that were raided by the European Union (EU) anti-trust officials over a possible collusion. This has sparked an interest to re-visit the subject of EU anti-trust law in the liner shipping industry, which was implemented in October 2008.

Last week, *Bloomberg* reported that AP Moller-Maersk A/S, CMA CGM SA and Hapag-Lloyd AG were among companies raided by EU anti-trust officials. The companies were reported to give full cooperation to the officials to carry out the probe.

EU regulators said they had "reason to believe" that the companies might have breached EU cartel or monopoly-abuse rules. The raid doesn't mean that the companies are guilty of anti-competitive behaviour, according to the European Commission.

The raid came in the midst of investigation into how container shipping freight rates rose in 2009, although demand dropped sharply amid the global recession and industry capacity swelled owing to delivery of huge new tonnage in the box trade.

Since the implementation of the anti-trust law, liner shipping companies have lost their privileged status under EU competition law with the withdrawal of the liner conference block exemption, which authorised horizontal price-fixing and similar agreements.

In areas where the liner consortia block exemption does not apply, all cooperative arrangements are carefully and individually vetted under the competition provisions of the European Council Treaty.

The competition regime, while lauded by importers and exporters, in the EU liner shipping context is not without problems, though.

Several legal questions have been raised over the introduction of the competition law in EU, in areas such as cooperation between liner shipping companies and the benefit of cooperative arrangement between liner shipping companies over the negative impact on competition. The strategies of these companies that may lead to an abuse of a dominant position have also been put under scrutiny.

Liner shipping companies have had to reconfigure their discussion agreements and business strategies to accommodate the abolishment of the block exemption so generously accorded to them before the enactment of the EU competition law.

This has led to greater competition among them in the EU trade, which is lauded by shippers.

It was reported that Hong Kong's OOCL, a powerful player in the liner shipping trade, cautioned against implementing anti-trust laws that

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prevent shipping lines from developing solutions and rationalisation exercises to deal with capacity overhang. While stopping short at endorsing price-fixing conferences, OOCL lamented that anti-trust laws have restricted liner companies from collectively discussing issues affecting the liner trade.

That coming from the world's 11th largest container shipping operator (based on 2010 ranking) is noteworthy. OOCL's grouse echoes that of many other liner companies which fear that the onslaught of open competition will adversely affect their business.

This anxiety is echoed by the recent recommendation of Singapore Competition Commission for the Singapore government to extend the block exemption to allow liner conferences to continue their trade until December 2015, with minor changes. This was made on grounds that anti-trust exemptions remain the norm for the global liner trade and most of Singapore's trading partners.

Also getting into the act are Australia and Japan, which are also looking to apply competition rules on liner shipping.

To this end, the recent announcement by the Joint Global Shippers Forum (JGSF) to promote anti-trust laws in Asia should make governments sit up and take note. Countries, especially trade dependent ones, which ignore the call by this powerful forum do so at their own peril and run the risk of being bypassed by shippers.

Best business behaviour

With the Competition Act slated for enforcement in Malaysia on Jan 1, 2012, companies in the maritime sector are expected to make a major leap forward in their business conduct and be at their "best business behaviours."

Operating in a borderless theater and ultra-competitive environment, the local maritime sector, which facilitates 95% of the nation's trade, is expected to take the front in realising the targets of the Act, in line with the aspiration to make Malaysia a regional shipping and logistics hub and a globally competitive maritime nation. Being an open but small economy, Malaysia must put in place an institutional framework that will not only lure investors and businesses but also to align local companies with international best practices to enable them to compete globally.

Even skeptics of anything good introduced by the Government would be hard-pressed to argue against the virtues of the Competition Act.

However, those who will be affected by the Act need to keep to the letter and the spirit of the Act, which must be strictly enforced without fear or favour, to ensure its optimal effectiveness and the attainment of its objectives.

The dynamism generated in the marketplace by the injection of greater competition and innovation through the Act can only be good for a country that is racing against time to become a fully developed nation by 2020. Sharp focus will be trained on the maritime sector to help fulfill this lofty ambition.

- *Nazery Khalid is a senior fellow at Maritime Institute of Malaysia.*



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