

Exempt vessel-sharing deals from competition law: ShipMin

Awaiting MCA's reply; aim is to improve India's representation in global trade

RUCHIKA CHITRAVANSHI & DHRUVKASH SAHA

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The shipping ministry has asked the Ministry of Corporate Affairs (MCA) to exempt vessel-sharing agreements (VSAs) from the purview of competition law to ensure better representation of Indian shipping lines and non-vessel operating common carriers (NVOCCs) in the global container trade, according to sources.

"The ministry has asked MCA to consider this exemption. We are awaiting a response," a senior shipping ministry official said.

The exemption is being sought with respect to Section 3 of the Competition Act, which prohibits anti-competitive agreements between enterprises, persons or associations. In 2012, an exemption for VSAs was introduced for the first time for a period of one year. After several extensions, the exemption expired in 2021.

In January 2022, the Competition Commission of India (CCI) passed an order against four maritime transport companies for cartelisation in the provision of maritime motor vehicle transport services. The CCI found that the companies had agreed on a "respect rule" to avoid competing with each other while sharing commercially sensitive information, including freight rates. Three of the firms applied for lesser penalty provisions and got reduced penalties from the CCI. While Section 3 does not permit agreements that directly or indirectly determine purchase or sale prices, or limit or control production, supply, markets, technical development, investment or provision of services, the law does provide for exceptions.

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Shipping scene

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agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services", Section 3 of the Act states.

While some experts argue that the exemption allows greater participation by small and medium shipping companies, leading to increased competition in the liner shipping industry, others say it is unnecessary. They warn that any scope for cartelisation under a specific legal exception poses risks to markets that most

regulators would be reluctant to allow. "There is no need for a specific exemption in light of the safe harbour available for efficiency-enhancing joint ventures under the Competition Act. Companies in other sectors, such as automotive, enter into agreements for technology sharing or joint procurement to improve efficiencies, as permitted under the law, as long as they are not colluding to skew market dynamics. There is no reason why shipping firms cannot comply with the same law," said Avantika Kakkar, partner and head of competition at Cyril Amarchand Mangaldas.

Supporters of the exemption cite the peculiar characteristics of the highly capital-intensive liner shipping industry, as well as improved connectivity and ship frequency between ports through the sharing of container space.

In a draft released in October 2024, the shipping ministry proposed that the exemption be granted for a period of three years, subject to two conditions. First, at least 5 per cent of the total space available under such VSAs must be provided through Indian-flag vessels. Second, at least 5 per cent of the total space must be allocated to Indian NVOCC entities.

The ministry has proposed that the Directorate General of Shipping monitor the operation of VSAs, including adherence to the prescribed terms and conditions. The DG Shipping may seek information on issues such as refusal to negotiate with shippers, non-transparent fees, discriminatory practices, or anti-competitive behaviour. "The report of such an inquiry shall be communicated to the CCI for determining if such a VSA has an appreciable adverse effect on competition," it has proposed.