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INDIAN SHIPPING EXEMPTION: A COMPARATIVE ANALYSIS

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ABSTRACT

The issue arose when the Ministry of Corporate Affairs issued a notification in September 2012 to exempt Vessel Sharing Agreements and Voluntary Discussions Agreement. Looking upon the notification, one can clearly observe that the Ministry has bona fide intention but the application of the notification is ill-conceived. Ministry of Corporate Affairs issued a notification in September 2012 to exempt Vessel Sharing Agreements and Voluntary Discussions Agreement. The notification clearly is of a bonafide nature, but the haste of drafting has made it a waste.

The agreements not only promote domestic shipping but also international shipping but such haphazard instructions create nothing apart from trouble. These agreements promote domestic shipping along with international shipping, but irregular instructions create nothing apart from trouble. Upon comparison with countries like Singapore, USA, Canada, Australia, New Zealand, Japan and European Union- which have a better developed shipping industry than ours, we can easily see the lacunae in the laws governing our shipping industry. Cue should be taken from other nations and proper guidelines should be established for the domestic shipping companies.

In this paper, we aim to look into the advantages and disadvantages of the exemptions granted by the Competition Commission of India. We shall also see how the regulations are imposed on the shipping industry in India. We will also compare the laws pertaining to Vessel Sharing Agreements and Voluntary Discussions Agreement of other nations to ours.

In the end, the question remains, "Are the Shipping Exemptions too much of a good thing?"

I. INTRODUCTION

The guiding principles behind competition law are to promote smoother markets by inhibiting private players from obstructing market. Its increases consumer welfare, encourages dynamic efficiency and adds to the progress of the economy. The Competition Commission of India keeps a close eye on the anti-competitive agreements, may it be horizontal or vertical agreements. International shipping liners try to undermine small domestic players all across the globe, and hence the government steps in to save them from the usurping powers. But sometimes these agreements which seem anti-competitive on the face of it, benefit both the consumers as well as the service providers. The current scenario of the

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international shipping industry is dominated by a Danish giant "Maersk". In India, a public sector enterprise "Shipping Corporation of India" creates waves in the domestic seas.

The exemption concerning Vessel Sharing Agreement and Voluntary Discussion Agreement has been welcomed with open arms by the shipping industry worldwide. Vessel Sharing Agreement sanctions liners to share space on each other's vessels, share terminals, and improve productivity by reducing cost and environmental burdens. Voluntary Discussion Agreement allows carriers to share market information, adopt common service standards and suggest a unified voice in discussions with government bodies and shipping companies. The exemption frees the liner companies for a year. The journey beyond this time period remains unclear.

II. THE NOTIFICATION

The Ministry of Corporate Affairs ("MCA"), Government of India issued a notification dated September 19, 2012 ("Shipping Notification"), to exempt Vessel Sharing Agreements ("VSA") and Voluntary Discussions Agreement ("VDA") (collectively "Agreements") from being anti-competitive, for a period of one year.[3] By virtue of this notification, shipping liners will be free to enter into VSA and VDA within the sector, including the foreign companies operating in India.
VSA is a term used to refer to an agreement which is, entered into between the liners for sharing space on each other's vessels, consolidate duplicative services and share terminals to improve productivity and lower costs.

Example: Liner A has a deck space of 25 containers and it is sailing with only 10 containers at one instance, liner B's ship is undergoing repair, but it has 15 containers to be shipped on the route liner A is plying, hence A and B enter into a VSA to share vessel space and set forth conditions for future sharing of the vessel, by this action both the liners share space and utilize space to the possible limit resulting in sharing of sailing costs. Whereas VDA refers to the agreement entered into between parties, to share market information, adopt common service standards and offer a single point of contact in discussions with government bodies and shipper organizations, to a limited extent, depending on the parties.

The Shipping Notification seems to provide a blanket exemption, while the Competition Commission of India ("CCI") in the past has shown its reluctance from allowing blanket exemptions, this increases the ambiguity related to this notification issued by the MCA. Although the MCA has put these agreements under the scanner by having Director General of Shipping ("DGShipping") monitor such

[3] *See* http://www.mca.gov.in/Ministry/pdf/draft_notification_19_sept_2012.pdf (Last visited on July 30, 2013)

agreements in order to discuss and evaluate possible extension of this exemption. However, in the absence of any guidance/clarity, the implementation and use of this notification may potentially raise issues, and it would be highly ambiguous for the DG Shipping to monitor agreements in absence of any mechanism.

This article aims to analyze the Shipping Exemption in the light of models followed by leading foreign jurisdictions. By comparative analysis of the Indian shipping industry's regulatory regime with the industries across the globe we aim to reach a consensus as to the applicability and likely problems which may arise from the Shipping Exemption.

III. THE CCI AND ITS IMPACT

The Competition Act, 2002 ("Act") was passed by the Parliament in the year 2002, to which the President of India accorded assent and was also published in the Official Gazette of India in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007. Effective from May 20, 2009, the substantive provisions dealing with anti-competitive agreements (Section 3) and abuse of dominance (Section 4) under the Competition Act were notified and are currently in force. Further, effective June 1, 2011 the provisions dealing with regulation of mergers and acquisitions were notified. CCI is the regulatory body with respect to application of the Act, in the recent past it has come forward as a stringent regulator, with an aim to provide the ultimate benefit to the customers by fostering healthy competition throughout all business sectors. CCI in the recent past has taken an active stand against anti-competitive agreements and imposed heavy penalty on defaulting entities; this has had a significant impact on the business community and the economy as a whole.

In the real estate sector, DLF on account of imposing one sided unfair terms on flat buyers was found to have abused its dominant position. The CCI imposed a penalty of INR 630 Crore i.e. 7% of the average turnover. Further in compliance with the CCI order DLF amended its agreement with respect to flat buyers. Subsequently other real estate players indulging in same manner of business amended their respective agreements in order to comply with the CCI order.[4]

In certain sectors, after the CCI found a set of conduct to be anti-competitive, there has been a change in the manner in which business is carried out and/or regulated by respective sectoral regulator. The sectoral regulator for telecom, Telecom Regulatory Authority of India ("TRAI") came up with a

[4]Belaire Owner's Association Vs. DLF Limited Case no. 19/2010 *available at* www.cci.gov.in/May2011/OrderofComission/DLFMainOrder110811.pdf, (Last visited on July 30, 2013)

Consultation Paper on Monopoly / Market Dominance in Cable TV Services[5] which addressed the concerns relating to cross ownership and cable TV/local cable operator regulations in this sector. The TRAI Consultation Paper was issued after an order of CCI in the case of *Kansan News Pvt. Ltd. vs. Fastway Transmission Pvt. Ltd*[6]. It is understood that in today's economic scenario, the CCI and its role is very crucial in order to maintain business conduct and competition across sectors. CCI aims to prove consumers with a safe competitive market environment.

In a recent step, MCA has provided banking sector with an exemption to facilitate Merger and Acquisition ("M&A") activities in this sector ("Banking Exemption"), it is noteworthy that this exemption is very strict and abides with an array of prerequisites and compliances. A banking corporation in need of RBI supervision has to undergo scrutiny and has to be screen by the RBI in order to avail the banking M&A exemption.

Prior to this exemption the MCA in the past has only exempted banking sector from the scope of the Act, though the Banking Exemption is subject to regulations and prerequisites and is only applicable with respect to merger and acquisition transactions undertaken between banks. The exemption in the shipping industry is the second exemption from the MCA though it is not as regulated and specific as the prior exemption.

In a recent interview[7], Mr. Ashok Chawla, Chairperson CCI was quoted saying that the CCI has no plans to provide exemptions to any sector, and the exemptions provided will not be blanket exemptions at all. This makes it clear that the shipping industry is considered to be one of high importance and such exemption was considered necessary by the govt. to foster growth and cut costs in the sector. It may be noted that CCI usually does not provide any blanket exemptions, , whereas in the present case this exemption for the shipping sector is devoid of any check, balance and scrutiny mechanism. For a balanced understanding of the effectiveness of the exemption, the current state of the Shipping industry in India should also be studied.

IV. INDUSTRY STRUCTURE

The Indian shipping industry and its significance is not alien to anyone. Ranked 15th in the world, the Indian Shipping industry with around 600 million gross tons per year, is one of the most crucial and

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[5] TRAI Consultation Paper Consultation paper no. 5/2013, released on June 3, 2013

[6] Case no. 36/2011; *available at* www.cci.gov.in/May2011/OrderofComission/362011.pdf, (Last visited on July 30, 2013)

[7] *See* www.livemint.com/politics/hxdCNNCkZxca3QeWc7ADnM/There-Shouldnt-be-a-blanket-exemption-CCIs-Ashok-Chawla.html,(Last visited on 30 July,2013)

important industry with regards to international trade. The shipping industry is responsible for the movement of approximately 95% of India's international trade, and is thus acts like a back bone for our international trade.[8]

India has around 1071 ships with 772 coastal and 349 overseas ships; The Indian coastal shipping is highly fragmented, this fleet of around 1900 ships caters to the high volume demands of the importer and exporters. However, the growth and large volumes or concentrated among the top 9 liners who account for 70% of the total tonnage being addressed by the Indian Shipping industry, industry at present India has about 40 companies functioning under this industry, many amongst these companies have a fleet of not more than two ships.[9]

The shipping industry involves high investments and costs and the cost-revenue equilibrium is hard to achieve without high volumes in sails. Apart from the sailing costs, the poor state of port infrastructure lands up in ships docking for unreasonable time. It is understood that the revenue in the industry flows from the sail done by the respective liners and the docking period results in only cost addition with no revenue generating from such operations. In light of the above stated facts, we can rightly say that the poor state of infrastructure and high level or risk and investments makes sustaining in the market difficult for seasonal operators and also for the streamlined liners.

After an analysis of this industry we can outline the following advantages for the growth of this sector: (a) access to major shipping routes, (b) more than 7500 km of coastline, (c) fleet expansion by major domestic liners, (d) overseas acquisitions by Indian liners, (e) more than USD 4 billion is expected to be invested in Indian ports, (f) container terminals being built at Mumbai and Chennai.
The demerits and threats to the industry are as follows: (a) Underinvestment has affected the development of ports, (b) high levels of bureaucracy preventing the government funding, (c) major developments taking place in Sri Lankan port sector may reduce demand for trans-shipment, (d) Indian ports have suffered from congestion during 2012, potentially slowing countries growth trajectory.

V. REGULATORY REGIME IN SHIPPING

The shipping liners in India are subjected to the provisions of the Merchant Shipping Act, 1958 ("MS Act") which deals with the Indian ships and their registration amongst other guidelines for sailing in the Indian waters, but this statute does not create any regulations or conditions addressing the business aspect.

[8] DIBS-OMII survey, Indian Marine Industry – Shipping, April 2012
[9] *Ibid*

The power to regulate and supervise shipping in India rests with the DG Shipping at the top level and is further delegated to various Captain of Ports ("CoP") and Mercantile Marine Departments ("MMD") at various coastal states. The state wise delegation helps DG Shipping in addressing the problems and issues of coastal states and liners across the country.

DG Shipping along with various CoPs and the MMD draft and discuss rules and guidelines which are then implemented for the shipping industry. It is interesting to note that, CoP and MMD are responsible for granting permissions of various kinds, as prescribed in the MS Act, further the overall monitoring is done by the DG Shipping and in certain cases, approval from the DG Shipping is mandatory.

Except the issues which this notification aims to relax, the other major issue with the shipping industry is the rule of cabotage ("Cabotage Rule") which is provided in the MS Act, along with DG Shipping's objective to secure 100 % of coastal trade for national flag bearing vessels[10], which means that foreign vessels are not allowed to sail on a domestic route in Indian waters. Cabotage Rule has two sides, which are set out below:

i. It provides national flag vessels with opportunities of business in the domestic circuit and also cuts down competition for these national entities from the foreign players which deal with high volume.

ii. The total cabotage levies high costs on the foreign shippers, as they have to unload their total capacity on one Indian port and from there, the goods are transported to other destinations via sea/road/rail etc. This activity involves high costs and is a lot more time consuming.

In the year 1992, Cabotage Rule was relaxed for a period of 5 years, i.e. till the year 1997, but again the rule has been imposed and it is found to have a lot of disadvantages amongst fewer advantages. With the Shipping Notification in place, the industry accepts some relaxation to the foreign players, as they will now be equipped with the power to agree with domestic players on sharing vessels and voluntarily discuss confidential terms.

The Shipping Notification seeks to exempt VDA and VSA. These agreements include price fixing and market sharing clauses, which make these agreements anti-competitive. By the effect of this notification, the liners will be able to enter into these agreements without the scrutiny of the CCI. The agreements are considered to be catalysts for growth in the shipping segment as they aim at easing the s market burden of the shipping companies as well as relaxing investment in the same. It is discussed

[10] *See* www.dgshipping.com/dgship/final/manual/mchapter12.htm

that the sector asks for high risk investments which may be eased by way of pooling in of resources. The notification aims to smoothen the above.

Any such exemption on the shipping liners would not only have an effect on domestic companies but also have an effect on international liners. Accordingly, it becomes important to look at how such agreements are dealt with by authorities in other jurisdictions.

VI. EXEMPTIONS IN OTHER JURISDICTION

1. Singapore

Under Section 36 of Singapore's Competition Act, 2004 ("SC Act") the Minister for Trade & Industry has the power to make an order at the recommendation of Competition Commission of Singapore ("CCS") to exempt a particular category of agreements from the prohibition on anti-competitive agreements, decisions and practices under Section 34 of the SC Act. These exempted agreements must contain the following characteristics: Firstly, the agreement/decision/ practice should lead to improvement in production/distribution. Secondly, it should lead to the promotion of technical/economic progress. Thirdly, such practices, decisions or agreements should not impose on the concerned undertakings any restrictions which are not indispensable to the attainment of their objectives and lastly they should not allow undertakings, the possibility of eliminating competition in respect of a substantial part of the services in question.

Another condition imposed by CCS is that when the aggregate market share of the parties to a liner shipping agreement exceeds 50 percent, the parties are required to file their agreement and any variation or amendment of it with the CCS. This is done to ensure healthy competition and eliminate chances of any anti-competitive behavior.[11]

2. USA

In the United States of America ("USA"), the US Ocean Shipping Reform Act, 1998 ("OSRA") is enacted to grant immunity to liner shipping conferences in the USA, however it places rigid pre-conditions for availing the benefits in the exemption for the same which reduced the chances of formulation of an anti-competitive agreement. The main objectives of the OSRA is to increase the flexibility of carriers/shippers to tailor their contractual relationships in a manner that best meets their need, whilst at the same time ensuring that the result would not be anti-competitive. It is necessary for

[11] *See* Order of the Competition Commission Singapore available at http://www.ccs.gov.sg/content/ccs/en/Legislation/Block-Exemption-Order.html, (Last visited on July 30. 2013)

the liners, wishing to avail the exemptions to satisfy the following conditions: Firstly, shippers and carriers have to negotiate liner service agreements and keep the terms of the contracts safe from other carriers and shippers; Secondly, conference tariffs have to be published; and lastly, independent rate action for carriers should be allowed so that they can cover multiple trade lanes which makes it easier for larger shippers to engage in one stop shipping.

3. Canada

In Canada the Shipping Conferences Exception Act, 1987 ("Canadian Shipping Act") deals with granting of competition law exemptions to shipping liners. Section 4 of the Canadian Shipping Act declares that the Competition Act, 1985 ("Canadian Competition Act") will not apply to any agreements entered into by a liner conference to the extent that:

Firstly, the conference agreement requires a member of a conference to use a tariff. Secondly, the conference agreement requires a conference member to carry out a loyalty contract if it provides for the following: (a) Termination by either party at any time within 90 days from the date when a notice to conveying intention to terminate is communicated to other member in writing; (b) Application to goods shipped by the shipper of tariffs that incorporate a dual rate system in which no contract rate for any goods is less than 85% of the non-contract rate for those goods; (c) No provision exists to the effect that a payment has to be made by any member of a conference of a rebate charged for the transportation of any goods shipped by the shipper; (d) Contains no terms / conditions in a standard form approved by the members of a conference requiring a shipper of goods to offer to those members for transportation by them of all goods shipped by that shipper; (e) Regulates the timing of sailing of vessel, members and the kind of service that members of a conference may provide; (f) Regulates the admission and expulsion of members; (g) for sharing of transportation of goods as well as the earnings and losses arising out of each transportation.

4. Australia & New Zealand

A. Australia

In Australia the pre-dominant legislation with regard to competition law is the Competition and Consumer Act, 2010 ("Australian Competition Act"). Part X of the Australian Competition Act ("PartX") deals with liner shipping services, it provides for an exemption to liner shipping services and stevedoring services which enter into agreements revolving around fixation of prices, pooling or apportioning of earnings/losses/traffic and regulation of capacity etc. For obtaining this exemption, shipping liners have to abide to the conditions set out as follows: Firstly, all liner shipping companies are required to register under an Australian agent and update information at regular intervals.

Secondly, any shipping company which proposes to make any agreement with another shipping company must apply to register these agreements to obtain approvals for exemption, these agreements can include verbal agreements, discussion groups as well as joint shipping operations. Thirdly, registered agreements must meet a range of pre-conditions. Fourthly, Shipping companies are required to notify designated shipping bodies of their proposed agreements. Fifthly, any shipping company with a major market share must be registered with the Registrar of Liner Shipping whether operating under an agreement or not. Lastly, shipping bodies intending to discuss shipping agreements and negotiate with shipping lines are also required to register.

However, in spite of an exemption provided, investigations can be started at the initiative of the Minister for Infrastructure and Transport, Government of Australia or by the Australian Competition and Consumer Commission into a range of issues including unfair pricing practices.

B. New Zealand

In New Zealand, Commerce Act, 1986 ("NZ Commerce Act") by virtue of its section 44(2) provides exemption for liner shipping from competition law. Section 44(2) of the NZ Commerce Act provides that the provisions relating to restrictive trade practices will not apply in an instance where the following have been observed: Firstly, where a contract, arrangement or understanding has arisen which contains a provision for the carriage of goods by sea from a place in New Zealand to a place outside New Zealand or from a place outside New Zealand to a place in New Zealand and Secondly, where any act has been undertaken to give effect to the activities enumerated in the above-mentioned point. However any contract, undertaking or arrangement that arises which contains a provision with regard to the loading or unloading of a ship will not be considered for the exemption.

However if an investigation is initiated and the Minister of Transport finds evidence of carriers engaged in unfair practice which would affect the interests of any New Zealand shipper in a substantial way then information must be furnished by the impugned carriers to the Secretary of Transport detailing all information relating to agreements containing the following elements:

(a) Fixing/regulation of freight rates; (b) Withholding special rates or other special privileges/advantages or the imposition of any detriment or disadvantage to any New Zealand shipper; (c) Allocation of ports to any particular vessel or carrier or the restriction or other regulation of the number or character of goods to be carried; (d) Restriction/Regulation of the volume of goods being carried by any particular vessel.

For the purposes of NZ Commerce Act, an association of carriers (i.e. liner conference) would be engaged in unfair practice if they engage in the following activities: (a) Abuse of Dominant Position; (b) Substantial failure to give reasonable notice to any New Zealand shipper who is likely to be affected by impending changes in terms and conditions on which such shipper entered into an

agreement with the association of carriers; (c) Unreasonable refusal./failure to enter into negotiation or consultation requested by any New Zealand shipper relating to the terms and conditions upon which goods were transported; (d) Engaging in Bid-Rigging.

5. *Japan*

In Japan, Antimonopoly Act, 1945 ("AM Act") provides for exemptions with regard to liner conferences. These exemptions have been justified on the three grounds, Firstly, seasonal fluctuations in the volume of cargo; secondly, large scale process industry and lastly, market is prone to extreme fluctuation in prices due to shifts in supply and demand.
Article 28, AM Act provides for exemptions with respect to agreements dealing with the following subject-matter (provided that certain conditions are satisfied): (a) Freight Rates; (b) Charges; (c) Other Transport conditions; (d) Trade Routes; (e) Ship Deployment; (f) Cargo loading.

However, it is mandatory for shipping services that wish to avail of this exemption to file the requisite information regarding such agreements with the Minister of Transport, Government of Japan who would then scrutinize the agreement and sanction or modify or refuse the same. Whilst deciding the application the Japanese Minister for Transport must also consult with the Fair Trade Commission in order to comply with all competition law provisions.

6. *European Union*

The European Union's competition regime is governed by Treaty on Functioning of European Union ("TFEU"). The European Commission ("EC") has adopted a new block exemption regulation revising the old exemption for liner shipping consortia, the recently implemented exemption, allows shipping liners to enter into cooperation for the purpose of providing a joint service in transporting cargo. The new regulation extends the exemption for such cooperation until April 2015, within a new legislative and economic environment. Changes notably include a reduction of the market share threshold from 35% to 30% above which companies do not qualify for automatic exemption under the regulation and an extension of the scope of the exemption to all cargo shipping liners.

Any agreement or arrangement crossing the automatic route threshold goes through strict scrutiny by the EC in order to examine its adaptability and consequences. It is noteworthy that the commission has stressed on having a mechanism to provide healthy competition, whereby no party can take any undue advantage.

VII. APPROACH

It is important for us to examine the Indian policy of exemption in contract to the policies adopted by the leading international jurisdictions; this contrast study will help us understand the practice in other jurisdictions, while helping us construct our strategy for such exemptions.

The approach taken by Singapore, USA, Japan, Canada, Australia & New Zealand in this regard does not create a specific distinction between the VSA(s) and VDA(s), but there are specific outlines as to the content and conditions of the agreement which are exempted and content and conditions which are not exempted, making it clear, as to what is exempted and what is not. This approach has given advantages to these jurisdictions in terms of effective control and monitoring over these agreements. It is understood through the press release of the Singaporean commission that the commission finds it easy to monitor and keep track of such agreements where there are conditions instituted in order to avail certain exemptions, this way the task of the commission is reduced and effectiveness is increased. Various jurisdictions namely Japan amongst others, prefers that such agreements should be submitted to the government departments for scrutiny and comments before being executed, this ex-ante method has helped the country safeguard its national flag bearing ships in the foreign markets.

VIII. COMPARISON

The foreign jurisdictions discussed in this study have separate provisions and statutes to control the activities of shipping liners. These enactments give the governments a better understanding and control over the conduct of the business. It is understood that the specific provisions and statutes increase the efficiency of commissions. In contrast, we can clearly see that this particular sector has been given credit in all major jurisdictions and certain exemptions have been put in place by the respective commissions, in order to provide business opportunities to the shipping liners. The primary reason behind imposing such exemptions has been the high cost in the sector and also the aim of the commissions to prove customers with the benefit of lowered costs and stability in the industry.

A distinction can be made between the policies adopted across various important jurisdictions and the one page notification which has come out from the MCA. It can be now construed that the Shipping Notification has brought about a blanket exemption and it is not sufficient enough to control the conduct of the sector. We can construe from the above mentioned policies in other countries that, all these nations have strictly formulated schemes of mechanism and content to be taken care of by the shipping liners while entering into VSA and VDA, this is done in order to maintain order in the industry and keeping track of the activities. So far these jurisdictions have been successful in maintaining healthy competition in their respective jurisdictions.

Whereas the Indian exemption does not put across any condition or perquisite compliance in order to avail such exemptions, this blind folded exemption is not in the spirit of the CCI. It is also seen that the

monitoring which the notification talks about, does not have a specified mechanism to be in force, in the absence of such mechanism, it is almost impossible for the DG shipping to evaluate and monitor such agreements.

From the above it can be seen that there is a need to further look into the shipping exemption in order to eliminate instances of misuse and ensure proper implementation.

IX. Conclusion

Through their Shipping Notification, MCA's attempt to promote economic activities falls short of perfection. It needs to establish guidelines to ensure the maintenance of law and order.

After looking at the laws in different jurisdictions and understanding the shipping industry, it is interesting to note that all of the foreign jurisdictions, follow a strict scrutiny mechanism before allowing shipping companies to enjoy privileges. The primary points taken care of by foreign jurisdictions in contrast to the Shipping Notification brought out by the MCA are as follows -

- Firstly, these exemptions are granted for a specific period of time, only after consultation with various stake holders, this exercise helps in increasing the effectiveness of the exemptions.
- Secondly, there is a need to draw a line of distinction between the VSA and VDA and their application, it is important to understand the distinction and nature of both types of agreement, though other jurisdictions have not specifically marked a distinction between the two except for Singapore and European Union, but the rules and prerequisites put forth by these countries draw a clear distinction as to till what extent these agreements are exempted and what subject matter is accepted.
- Thirdly, exemptions should not be blanket in nature, this fosters the possibility of rightful governance and reduces risk of misuse.
- Fourthly, jurisdictions like Japan have their respective ministries examine the agreements proposed to be entered into by the shipping companies even after they meet the prerequisites, this steps further helps in eliminating all the chances of misuse of this privilege; lastly, there is power reserved by the respective governments of these countries to start investigations even after the exemption is granted, this step further immunes the industry from any misuse or anti-competitive behavior.

In summary, it is right to state that for successful implementation of any exemption the two essentials are non-blanket nature and presence of remedy, i.e. exemptions should have prerequisites to be followed and further there should be power with the authorities to examine and take decision on any misuse of such exemption.

Consultation should be the basis of any approval granted for exemption. A certain prerequisite conditions should be put in force and a method of application to the respective authority for approving/modifying/rejecting such application should be put in place. Further upon receipt of such application, ministry shall consult the CCI on the implications of such agreement before deciding upon the application. Additionally, to ensure there is no unnecessary delay in processing and arriving on a decision for the application, a deeming provision should be built in. For example, if an application is not decided for a period of 45 days from the date of submission of application, it would be deemed to have been approved.

The Shipping notification needs a mechanism for the DG Shipping to evaluate the use of such exemptions, in order to evaluate the scope of extension of Shipping Notification, in absence of a mechanism is it very difficult for the DG Shipping to reach consensus as to the future course of Shipping Notification.

In light of the above it is concluded that, it is imperative to revise the Shipping Notification, which will enable to authorities to prevent any misuse or anti-competitive behavior.

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