



सत्यमेव जयते

भारत सरकार / GOVERNMENT OF INDIA

पोत परिवहन मंत्रालय / MINISTRY OF SHIPPING

नौवहन महानिदेशालय / DIRECTORATE GENERAL OF SHIPPING

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F. No. SL-JSA-4(16)/2010-III

Dated: 28.04.16

Merchant Shipping Notice No. 03 of 2016

Whereas the Ministry of Corporate Affairs, Govt. of India, vide its Notification S.O.646 (E) dated 02.03.16 [Annexure: 01 pages], published in the Gazette of India -Extraordinary, has exempted the vessel sharing agreements [VSAs] of the liner shipping industry from the provisions of section 3 of the Competition Act, 2002 as amended.

2. Whereas the aforesaid exemption is for a period of one year from the date of the publication of said notification, which shall be reckoned from 02.03.16 to 01.03.17.

3. Whereas the said exemption is in respect of the carriers of all nationalities operating merchant ships of any nationality from any Indian port.

4. Whereas the said exemption notification mandates that such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of market or customers.

5. Whereas during the said period of one year, the Director General of Shipping, Ministry of Shipping, Govt. of India, is required to monitor such agreements [VSAs].

6. Whereas for the purpose of monitoring such agreements, the person (s) responsible for the operations of such ships in India have been mandated to file in the office of the Director General of Shipping, Govt. of India, Mumbai copies of the existing Vessels Sharing Agreements or Vessels Sharing Agreements [VSAs] to be entered into by them which would apply to such operations during the said applicable period, along with the other relevant documents, within thirty days of the publication of the said notification or within ten days of the signing of such agreement (s), whichever is later.

7. Whereas earlier, the first exemption to VSAs was granted vide Notification S.O 3641 (E) dated 11.12.13, which lapsed on 11.12.14. Subsequently, Second such exemption to VSAs for a further one year period was granted vide the Notification S.O. 354 (E) dated 05.02.15, which also has since lapsed on 05.02.16. The instant notification grants another one year exemption vide Notification S.O.646 (E) dated 02.03.16, which shall be valid upto 01.03.17 and shall lapse on 02.03.17, unless otherwise extended.

8. Whereas legally for the periods for which the said exemption notifications were not in operation viz 11.12.14 to 04.02.15 and 05.02.16 to 01.03.16, no such exemption was in operation/ is applicable.

9. Whereas, the VSAs already signed and submitted during the aforesaid earlier periods of these exemptions with Directorate General of Shipping, Govt. of India[DGS]/ Indian Register of Shipping [IRS] DGS/IRS need to be furnished again, if such VSAs remain in operation during the current exemption period also.

10. Whereas the Director General of Shipping, Govt. of India/ Indian Register of Shipping will evaluate the performance relating to the exemption to shipping lines, after 6 months from the date of coming into force of the notification, to know the benefits from the operation of the said exemption to the shipping lines and the trade and / or to examine whether these agreements have caused/ are causing any appreciable adverse effect on competition.

11. Whereas the Director General of Shipping, Govt. of India is empowered to issue directions under section 411 of the Merchant Shipping Act, 1958, in public interest, or in the interest of Indian Shipping in relation to ships present in Indian waters, inter-alia.

12. Now therefore, the Director General of Shipping, Govt. of India, in order to put in place a system for receiving the aforesaid VSAs & to monitor the same, does hereby specify the following procedures to be followed by all concerned persons/ entities, in this context;

13. The Indian Register of Shipping [IRS], a Recognised Organization [RO] / classification society is hereby nominated to carry out the following functions, for and on behalf of the Director General of Shipping, Govt. of India, in this regard;

13.1 Receive copies of the aforementioned VSAs and all allied documents/ information related to the same.

13.2 Scan the VSAs and maintain an electronic and structured master database thereof pertaining to all such VSA's.

13.3 Prepare monthly reports thereon in the form and manner specified by the Director General of Shipping, Govt. of India.

13.4 Provide all necessary information to the Director General of Shipping, Govt. of India in relation to the complaints that may be received, in this respect.

13.5 Provide report on any malpractice detected if shipping companies or any other entities were involved in fixing of prices, limitations of capacity or sales and the allocation of market or customers.

14. The shipping companies/agents/operators who are responsible for operating liner services in India by way of a vessels sharing agreements [VSAs] are required to comply with the following measures, inter-alia [in order to meet the objectives of the said notification];

14.1. File the VSAs, in Duplicate, with effect from the date of the issue of this notice with the Indian Register of Shipping [IRS], within a period of 10(ten) days from the date of signing of any VSAs that the shipping company/entity may enter into, including any amendments thereto. The address for communication with the IRS, for the purpose is as given below;

Indian Register of Shipping
[Attn.: Shri C. Sriramamurthy, Chief Operating Officer]
52, Adi Shankaracharya Marg,
Opposite Powai Lake, Powai, Mumbai-400 072,
[E-Mail: vsai@irclass.org]

14.2. All the existing VSAs which are/will remain effective during the period of current exemption period & related documents shall be filed with the IRS again, irrespective of the fact that such VSA and related documents have been filed with DGS or the IRS during the previous two exemption periods.

14.3. Each shipping company/entity which is a part of a VSA shall, along with the filing of the VSA concerned, provide, through its Indian agents [incorporated under the Indian law(s)] a formal undertaking-cum-self-declaration, in the format as per the enclosed Annexure –II [02 pages], duly signed by the Managing Director of each such Indian agency company/ entity, representing VSA, certifying that the operation under the filled VSA concerned, has not caused/ is not causing/ is not likely to cause any appreciable adverse effect on competition.

14.4. Each such member shipping line shall provide the details of the line-wise loading and discharging of cargo undertaken by them at each terminal that they operate in India, including the respective ports, as destination/origin point(s). This information required to be furnished on a monthly mode, for the preceding month, shall be provided within a fortnight of the following month.

14.5. File, in duplicate, within a period of 10(ten) days from the date of signing, copies of all/ any marine terminal operating agreement(s) entered into with the terminals that the shipping company/ entity operates at.

14.6. File, in duplicate, copies of existing slot charter arrangements that they may have been entered with any other Indian shipping company/ entity.

14.7. The Indian Register of Shipping may charge an appropriate and reasonable fee for the said services rendered by it, in this regard.

15. Grievance redressal mechanism:

15.1. Any aggrieved party making an allegation that the VSA filed, under this notification, with the Director General of Shipping, Govt. of India has caused, or is causing or is likely to cause any appreciable adverse effect on competition, may file a clear & detailed complaint, with due justification & backup documentation, in writing duly signed by the aggrieved person, to the DG Shipping, Govt. of India, at the following

office address. Such a complaint should also be filed in an electronic form and be mailed at the following e- addresses;

15.1.1. Directorate General of Shipping,
Beta Building, 9th Floor, I-Think Techno Campus,
Kanjur Marg (East), Mumbai – 400 042
Tel : 022- 25752040/1/2/3 Fax 022- 25752029/35

15.1.2. E-mail, IDs [Official]:

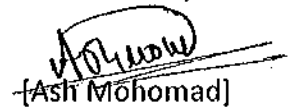
15.1.3 . amohd-dgs@nic.in

15.1.4. barguzer-dgs@nic.in

15.2. All the stakeholders including Indian Port Association, all Major Ports and end users may also please note the above mechanism and send their feedback, inputs or grievances, if any to the DGS, so as to make the monitoring by the DGS, in terms of the said notification, effective.

16. This MS Notice may be reviewed from time to time & shall be valid till 01.03.17

17. This issues with the approval of the Director General of Shipping & Additional Secretary to the Govt. of India.


[Ash Mohomad]

Assistant Director General of Shipping [MSL]

Encl.: as above

To;

1. Secretary to the Govt. of India, Ministry of Shipping, Gol, for kind information
[Attn.: Shri P.K. Sharma, Under Secretary]
2. Indian Ports Association, New Delhi.
3. All Major Port Trusts,
4. NISA, EISA, WISA, All India Shippers Council.
5. Indian Register of Shipping, Mumbai.
6. Container Shipping Lines Association (India).
7. INSA / ICCSA/ FOSMA / MASSA.
8. Hindi Section DGS, Gol, for the issue of the Hindi version of this notice.
9. Computer Section, DGS, Gol for uploading this Notice on the official DGS website, for the information of all the shipping companies / agents /operators concerned.
10. MTO Branch, DGS, Gol, Mumbai



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (II)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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नई दिल्ली, बृहस्पतिवार, मार्च 3, 2016/फाल्गुन 13, 1937

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NEW DELHI, THURSDAY, MARCH 3, 2016/ PHALGUNA 13, 1937

कारपोरेट कार्य मंत्रालय

अधिसूचना

नई दिल्ली, 2 मार्च, 2016

का.आ. 646 (अ).—केंद्रीय सरकार, प्रतिस्पर्धा अधिनियम, 2002 (2003 का 12) की धारा 54 के खंड (क) द्वारा प्रदत्त शक्तियों का लोक हित में प्रयोग करते हुए, लाइनर पोत परिवहन उद्योग के जलयान हिस्सेदारी करार को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से एक वर्ष की अवधि के लिए किसी भी भारतीय पत्तन से किसी राष्ट्रीयता के सभी राष्ट्रों के प्रचालित पोतों की बाबत उक्त अधिनियम की धारा 3 के उपबंधों से छूट प्रदान करती है, परंतु ऐसे करारों के अंतर्गत ऐसे सम्मिलित व्यवहार नहीं होंगे जिसमें कीमत नियत करना, क्षमता या विक्रय को सीमित करना और बाजारों या ग्राहकों का आबंटन अंतर्वर्तित है।

उक्त एक वर्ष की अवधि के दौरान, भारत सरकार के पोत परिवहन मंत्रालय, पोत परिवहन के महानिदेशक, ऐसे करारों को मानीटर करेंगे और भारत में ऐसे पोतों के प्रचालन के लिए उत्तरदायी व्यक्तियों, विद्यमान जलयान हिस्सेदारी करारों या किए जाने वाले जलयान हिस्सेदारी करारों की प्रतियों को, उक्त अवधि के दौरान प्रयोजनीयता के साथ अन्य सुसंगत दस्तावेजों को राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से तीस दिन के भीतर या ऐसे करारों पर हस्ताक्षर किए जाने के दस दिन के भीतर, जो भी पश्चात्पूर्ति हो, महानिदेशक, पोत परिवहन को फाइल करेंगे।

[फा. सं. 5 /20/2011—सीएस]

मनोज कुमार, संयुक्त सचिव

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 2nd March, 2016

S. O. 646 (E).— In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public interest, hereby exempts the Vessels Sharing Agreements of Liner Shipping Industry from the provisions of section 3 of the said Act, for a period of one year from the date of publication of this notification in the Official Gazette, in respect of carriers of all nationalities operating ships of any nationality from any Indian port provided such agreements do not include concerted practices involving fixing of prices, limitation of capacity or sales and the allocation of markets or customers.

During the said period of one year, the Director General, Shipping, Ministry of Shipping, Government of India shall monitor such agreements and for which, the persons responsible for operations of such ships in India shall file copies of existing Vessels Sharing Agreements or Vessels Sharing Agreements to be entered into with applicability during the said period alongwith other relevant documents within thirty days of the publication of this notification in the Official Gazette or within ten days of signing of such agreements, whichever is later, with the Director General, Shipping.

[F.No.5/20/2011-CS]
MANOJ KUMAR, Jt. Secy.

Undertaking-cum-self declaration on the letter head on the company/entity in terms of the Merchant Shipping Notice No.03 of 2016[F.No.SL-JSA-4(16)/2010-III] dated 28.04.16, issued by the Directorate General of Shipping, Govt. of India, while filing of vessel sharing agreements [VSAs].

I....., s/o Shri....., in my capacity as the Managing Director of M/s....., a company incorporated in India with registration no. [insert the registration number of the company], which is representing as the agency of India of the contracting party i.e [name of the principal] to the vessel sharing agreements[VSA] entered into onfor the shipping service.....,hereby undertake & declare on behalf of it said principal, that the VSA entered into between the following parties;

1.

2.

3.

4.

5.

6.

or more

has not caused/ is not causing/ is not likely to cause any adverse effect on competition during the tenure of this agreement..

2. I further certify that;

2.1. The VSA enclosed herewith does not, in manner what so ever, lead to fixing of prices, limiting production or sharing of markets (whether in writing or otherwise).

2.2. The said VSA also does not contain joint selling and purchasing provisions vis-a-vis with competitors.

2.3. Our company or its employees do not share any information about prices or business plans with competitors in any manner & at no time whatsoever.

Place: _____

Signature _____

Date: _____

Name _____

Designation _____

Seal of the
Organization