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INTERNATIONAL CHAMBER OF SHIPPING (ICS)

COMMENTS ON PROPOSED CHANGES TO CHILE'S MARITIME COMPETITION RULES

The International Chamber of Shipping (ICS) is grateful for the opportunity to comment on proposed changes to Chilean anti-trust law as it applies to merchant shipping .

The membership of ICS comprises national shipowners' associations from 36 countries including the *Asociacion Nacional de Armadores* in Chile. ICS represents over 80% of the world's merchant shipping tonnage.

ICS is the principal international trade association for the shipping industry, representing all sectors and trades including containership operators, tanker operators and dry bulk carriers, as well as specialised trades such as chemical carriers and car carriers.

ICS wishes to make a few remarks from the international perspective.

Any major changes that might be proposed to the current maritime competition regime in Chile could have implications for the liner (container) shipping industry globally, not just for those companies involved in trades to and from Chile.

Liner shipping conferences and consortia agreements (permitting, *inter alia,* slot sharing) have existed worldwide for decades and have facilitated the phenomenal success of international container shipping for almost 40 years.

These co-operative arrangements have served to provide stability in what are generally volatile and highly cyclicalmarkets, helping to guarantee the adequacy and efficiency of maritime servicesto the shipping industry's customers.

The current regulatory environment in Chile encourages container lines to compete and does not inhibit competition.

ICS acknowledges the intention of the authorities in Chile in wishing to examine carefully practices that might seem to distort competition.

However, ICS believes that it remains appropriate for exemptions or exclusions to apply to certain carrier agreements and that the existence of such agreements yields net benefits to shippers, exporters and consumers in Chile, as well as to the economy of Chile as a whole.

The main purpose of this short submission is to emphasise that, whatever might be decided for reasons of national competition policy, ship operators trading to and from Chile are part of a global shipping market, and that the various maritime competition rules that apply in the Asia-Pacific and the United States are currently broadly in alignment.

It is important to stress that the changes made to EU maritime competition rules in 2008 are regarded by the industry as a retrograde anomaly.

Other jurisdictions that have reviewed their maritime competition regimes since the European Union (EU) prohibition of Conferences came into effect have so far rejected calls by the EU to follow it unilateral example.

Competition rules in the United States and Latin America - not to mention virtually all of Chile's Asian trading partners including China (PRC), Japan and Singapore, Australia and New Zealand - reflect the recognition amongst governments that limited 'anti-trust' exemptions for shipping ensure that shipping lines are able to increase their range of services and markets, satisfying shippers' (andconsumers') demands more effectively, in terms of frequency, reliability, quality and price.

In particular we suggest that whatever Chile decides should be consistent with the APEC Guidelines Related to Liner Shipping adopted by the APEC member economies in June 2011 in Brisbane.

We also suggest that account should be taken of the decision reached by the Japanese government, announced in June 2011 - following a long review - to retain its Antitrust Immunity System applicable to carrier agreements (including the operation of liner conferences) until at least 2015.

The Japanese government announced that it had found no positive grounds for repealing a system which has been retained by many of Japan's major trade partners.

In particular, Japan concluded that the EU prohibition of liner conferences in 2008 had led to increased volatility of freight rates in European trades, a rise in surcharges levied by individual carriers, and contributed to tighter market conditions following the rationalisation of services by individual carriers that ensued as a partial result.

In addition, account should be taken of a similar decision taken by the government of Singapore to retain a block exemption for liner shipping agreements until at least December 2015. This followed a public consultation by the Competition Commission of Singapore and its subsequent recommendation to renew the existing exemption regime.

Serious account should also be taken of the publication, in February 2012, by the United States Federal Maritime Commission (FMC) of its detailed study of the impact of the EU prohibition on US trades.

Many of the FMC's conclusions appear to support the maintenance of the status quo with respect to current anti-trust immunity that applies in non-EU trades.

Based on the FMC's examination of the period 2006-2010, the FMC has concluded that the repeal of the EU Block Exemption has apparently not resulted with any relative decline in EU freight rates compared with Far East/US trades.

In other words, the FMC has concluded that shippers in EU trades have not been advantaged as a result of the new EU regime compared to shippers in Far East/US trades where the EU prohibition does not apply.

The US FMC suggests that there also appears to have been an increase in rate volatility in EU trades, compared to Far East/US trades, and that the activities of conferences that are still permitted in non-EU trades may have had a 'dampening effect' on rate volatility.

It is important to understand that a Bill introduced to the US Congress in 2010, which proposed the removal of some of the anti-trust immunity which is enjoyed by the liner industry in US trades, is now dead. Little further action is anticipated in the United States that is likely to gain support in the US Congress.

The US FMC has reached no firm conclusions as to whether any changes are warranted with respect to current US competition regulations such as the US Ocean Shipping Reform Act. However, the FMC study does seem to provide evidence in support of maintaining the status quo.

The practices in shipping which currently exist, such as conference and consortia agreements in liner trades, serve shippers and their customers well and we believe there is a very strong case for their exemptions from the competition provisions in Chile to continue.

They allow shipping services to cope better with the severe and sudden imbalances in trade flows that are a feature of global shipping markets, including intense seasonal fluctuations.

Co-operation amongst liner companies helps them to commit to the long term investments required to operate their high value assets, i.e. ships and logistics infrastructure costing *billions* of US dollars (a modern large containership can cost well over a hundred million US dollars to build, and millions of dollars a year to operate).

Reliable and stable shipping services have been the backbone of world trade and it is important that they continue to be so in the future.

A nation such as Chile, with its relative geographical isolation, and its need to deliver large volumes of exports to trading partners and to facilitate the importation of components and raw materials, is dependent on maritime trade to sustain the wealth of its citizens. This cannot be achieved without reliable and stable shipping services.

Ensuring the availability and stability of shipping services in Chile would therefore seem to be an essential element of any long term trade strategy.

We respectfully suggest that any radical changes to the current regime applicable to shipping could have an impact on the availability of liner shipping services needed to meet the Chilean economy's requirements.

The very nature of international shipping services creates a *de facto* unstable environment since there is generally complete free access to shipping markets.

New entrants can come in, and established shipping companies can extend their activities to new markets. But significant capital investment is required in vessels, logistic systems and other equipment, to guarantee the continuous and long term services required by customers, irrespective of short term trade variations.

Entry of short term services is relatively easy through the use of chartering tonnage. However, the available capacity in shipping always needs to exceed volumes shipped if operators are to be able to guarantee capacity to customers, taking into account the constant market changes, significant cyclical seasonal peaks in demand and, importantly, imbalances between demand for the inboundand outbound legs of voyages to and from Chile .

Ship capacity that is not utilised when a ship sails to or from Chile cannot be stored for later use. The potential to earn revenue from the available capacity on any sailing is lost once the vessel departs.

It is also important to recognise the commercial power enjoyed by large shippers, and that their control of large volumes of cargo provides them with significant negotiating strength.

ICS would add that shipping markets are remarkably open. Current co-operative practices do not create any barriers to free access to trade. In co-operation with governments, the industry is active in encouraging the elimination of any limited protectionist measures that may still arise.

ICS hopes that these brief comments are useful. Their principal purpose is to encourage the authorities in Chile to take full account of regimes governing shipping in the rest of the world, particularly with regard to its trading partners in Asia and the United States.

We believe that Chile should take full account of the recognition given by other competition authorities to the benefits of current practices, such as liner conferences and consortia, in terms of efficiency of world trade, and the implications for national economies and the interests of consumers.

We respectfully suggest that this is especially important for a nation such as Chile that has such a very high dependency on the availability of reliable maritime services in order to maintain their position as major trading economies.

Yours faithfully

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