

# International Chamber of Shipping

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## AUSTRALIAN COMPETITION POLICY REVIEW INTERNATIONAL CHAMBER OF SHIPPING COMMENTS ON THE DRAFT REPORT

1. The International Chamber of Shipping (ICS) is grateful for the opportunity to follow up its initial remarks on the Competition Policy Review's April 2014 Issues Paper with further comments on the Draft Report issued in September 2014. ICS wishes to comment in particular on the Report's recommendation that Part X of the Competition and Consumer Act (CCA) be repealed and a block exemption process created to be overseen by the Australian Competition and Consumer Commission (ACCC).

2. ICS is the principal international trade association for shipowners, representing all sectors and trades, including containership operators. The membership of ICS comprises national shipowners' associations from 36 countries, including the Australian Shipowners Association, and Shipping Australia Limited as an Associate Member. Collectively, ICS represents over 80% of the world's merchant shipping tonnage.

3. In its initial comments, ICS fully supported the submission made by Shipping Australia Limited in support of the maintenance of Part X of the CCA.

4. The ICS submission highlighted that both consortia and discussion agreements are practices that have existed worldwide for decades and have facilitated the phenomenal success of international container shipping for almost 40 years, helping to guarantee the adequacy and efficiency of maritime services to the shipping industry's customers.

5. Such arrangements 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. They allow liner companies to commit to the long term investments required to operate their high value assets, i.e. ships and logistics infrastructure costing hundreds of 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).

6. Rather than preventing competition, the facilitation of these practices under Part X allows and encourages container lines to compete robustly in terms of the quality of service that they provide. The ability to discuss capacity and reach voluntary agreements according to fluctuations in demand enables a greater number of service providers to enter the market, thus increasing the choice for customers and maintaining a competitive environment. Equally, discussions on common standards for rates can

help ensure transparency for customers and enhance competition between service providers. Without Part X, the costs of entry into the market, together with the costs required to achieve authorisation, could discourage the entry of many shipping lines into Australian trades, thereby preserving the market for only those companies that can afford to comply and potentially increasing freight rates as a result.

7. The continued existence of anti-trust exemptions is also beneficial to the shipping industry's efforts to improve its environmental performance, including efforts to deliver reductions in its carbon dioxide emissions. The impact of improvements to the operational efficiency of a ship will be moderated if the cargo capacity of that vessel is not fully utilised. Agreements on capacity enable more efficient use of vessels, thereby significantly reducing fuel consumption and CO<sub>2</sub> emissions.

8. The provisions enshrined in Part X are therefore of vital importance to the maintenance of reliable, stable and efficient shipping services. For a nation such as Australia, with its relative geographical isolation and its dependence on maritime trade to deliver large volumes of exports to trading partners and to facilitate the importation of components and raw materials, this would seem to be an essential element of any long term trade strategy.

9. The Review Panel's Draft Report, issued in September 2014, recommends the repeal of Part X and the creation of a block exemption process overseen by the ACCC.

10. ICS emphasises that any recognition of the need for anti-trust exemptions for shipping, including the Panel's proposal for a block exemption process (which appears to be in line with the 2011 APEC Guidelines Related to Liner Shipping), represents a positive development. However, the Report's recommendations clearly propose a move towards a more limited set of immunities than presently permitted, and ICS has some outstanding questions regarding the apparent justifications for this change.

11. The Report suggests that one motivation for the repeal of Part X is that 'other jurisdictions have moved to more competitive regimes'. In this regard, it is important to clarify that following the European Union's (EU) 2008 decision to prohibit liner conferences there has not been a wider shift towards the repeal of shipping's anti-trust immunities.

12. Indeed many competition authorities, including the United States, Canada, China, Japan and Singapore (all of which have recently reviewed their application of competition regimes to shipping) have retained competition law immunities similar to those enshrined in Part X of the CCA. These regimes reflect their governments' recognition that such anti-trust exemptions are necessary to ensure that shipping lines are able to maintain their range of services and markets, thereby satisfying shippers' (and consumers') demands more effectively in terms of frequency, reliability, efficiency, quality and price.

13. ICS would encourage the Review Panel to give closer consideration to the anti-trust exemptions in place for liner shipping under the United States competition law. While the Report presents this as a justification for its recommendations, in reality the US approach is actually very similar to the exemption process currently enshrined in Part X. In particular, most discussion agreements permitted under Part X do not compel the parties to agree on any decision made under the agreement. Like in the US, actual rates and charges are set through negotiations between individual shipping lines and their customers.

14. The Report also appears to claim as justification for its proposed changes that moves towards ‘more competitive’ regimes have ‘not led to excessive instability’. However, as highlighted in ICS’s initial comments, the conclusions of the Japanese Government’s 2011 review of its Antitrust Immunity System are worthy of note. As part of its considerations (the result of which was a decision to maintain the substantial anti-trust exemptions in place for liner shipping) the Japanese review concluded that the EU’s prohibition of liner conferences had led to an increased volatility of freight rates in European trades, a rise in surcharges levied by individual carriers, and contributed to tighter market conditions.

15. Similarly, a 2012 US Federal Maritime Commission study aimed at determining the impact of the EU’s 2008 prohibition concluded that the repeal of the block exemption has not resulted in any relative decline in EU freight rates compared with Far East/US trades and observed that there appears to have been a comparative increase in rate volatility in EU/US trades. (The study can be downloaded at [www.fmc.gov/assets/1/Documents/FMC\\_EU\\_Study.pdf](http://www.fmc.gov/assets/1/Documents/FMC_EU_Study.pdf).)

16. The repeal of Part X would lead to a great deal of uncertainty for liner shipping operators calling in Australia, both in terms of the as yet undefined parameters of the block exemption process and the treatment of those agreements falling outside of the exemption.

17. More broadly, the repeal of Part X could foster uncertainty beyond the Australian context. Given the importance of cooperative arrangements to the stable and efficient provision of liner shipping services, such a change could potentially be damaging to other economies. The various maritime competition rules that currently apply internationally (particularly within the Asia Pacific region) are actually in broad alignment. Any major changes to the current maritime competition regime in Australia could have serious implications for the liner shipping industry internationally and would appear to merit further consultation with Australia’s trading partners before being implemented, especially those in the Asia Pacific region which now co-operate on maritime competition issues via the APEC Transportation Working Group.

18. In line with Shipping Australia Limited, ICS therefore encourages the Review Panel to give renewed and careful consideration to the maintenance of Part X.

We hope these remarks are helpful.

Yours faithfully

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