

INTERNATIONAL LINER CARGO SHIPPING:

A REVIEW OF PART X OF THE TRADE PRACTICES ACT 1974:

PRODUCTIVITY COMMISSION ISSUES PAPER MARCH 1999

This submission responds to the Productivity Commission's Issues Paper of 31 March. It is made on behalf of the Council of European and Japanese National Shipowners' Associations (CENSA).

CENSA is comprised of the National Shipowners' Associations of Denmark, Finland, France, Germany, Greece, Italy, Japan, the Netherlands, Norway, Sweden and the United Kingdom, plus individual ocean common carriers from most of those countries. CENSA carrier members operate vessels worldwide, including the routes serving Australia.

CENSA welcomes the opportunity to contribute to this review process. A fundamental concern of those engaged in international liner shipping is that, in establishing national and regional regulatory regimes, governmental authorities should take proper account of regulations already put in place by their trading partners. The Commission asks (paragraph 2.8) whether inconsistency in regulatory regimes between major trading partners would matter in practice. We believe it is of critical importance. Liner vessels often visit a number of different jurisdictions in a single voyage. Subjecting these operations to significantly different legal regimes would create serious uncertainty and disruption.

A number of Australia's trading partners have very recently reviewed or are currently reviewing the position of liner conferences within their competition policy regimes. In the US, the Ocean Shipping Reform Act, which became effective 1 May, has maintained an anti-trust immunity for carrier agreements including conferences; the EU block exemption for liner conferences contained in Regulation 4056/86 remains in place; and a recent review in Japan has resulted in legislative proposals to improve the procedure for the examination of carrier agreements, while maintaining the anti-trust immunity. Less certain, at the time of writing, are the prospects for new regulatory regimes in China and Thailand – where some proposals have been made which, if enacted, would result in intrusive and bureaucratic intervention in liner conferences and perhaps in the markets more generally. CENSA has

urged all of these authorities to have due regard to the principle of comity in establishing their regulations. We

welcome the Commission's statement in this respect that account will be taken of the relevant OECD Agreements relating to the Common Principles of Shipping Policy and the Conclusions on the Promotion of Compatibility of Competition Policy.

Turning to some of the specific questions that have been raised: -

- 1. The current and future role of conferences.** The paper refers to a number of developments in liner shipping in recent years including different forms of operation and co-operation. We consider that there is ample evidence to demonstrate that the liner shipping markets are competitive. The markets have seen significant new entrants; important innovations; high investment levels; improved services; generally reduced rates; and a wide mix of market driven developments including mergers, alliances, slot chartering, and consortia. The key point is that all of these developments have been able to take place within the current regulatory framework and there is no evidence that the activities of conferences have inhibited market-driven responses.
- 2. Are there other ways to achieve the objectives of Part X?** CENSA considers that the discrete regulatory regimes that have been put in place for liner conference shipping by Australia and Australia's major trade partners provide the best means of establishing rules that are clear and certain. This enables the various authorities to take full account of the issues of comity in deciding their regimes. An alternative approach based on an ad hoc consideration of individual agreements in specific trades would inevitably both add to costs and create serious uncertainties.

In sum, CENSA considers that Part X has worked well; it has enabled the Australian liner markets to be competitive and responsive, while avoiding incompatible regulations with other jurisdictions. While these regulatory regimes may be reviewed from time to time it is essential in today's global economy for competition authorities to take full account of the relevant policies of their major trading partners.