

**National Farmers' Federation**

**Submission to the Productivity Commission on  
International Liner Cargo Shipping:  
A Review of Part X of the Trade Practice Act 1974**

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## **1. Introduction**

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The National Farmers' Federation (NFF) as the principal voice of rural Australia has been supportive of the overarching aims of the National Competition Policy (NCP) program introduced by the nine State, Territory and Commonwealth Governments, although a number of serious concerns have now been raised about its speed of application. Essentially, we agree with the aim of lowering business costs, enhancing competitiveness and creating incentives in order to facilitate sustainable economic growth. However, problems exist with the unfair distribution of costs and benefits of NCP (adjustment problems which are greater in rural and regional Australia) and the longer term consequences of NCP for infrastructure provision in regional areas. We understand that the current review is prompted by the application of NCP to liner shipping. In the same terms as NCP should be measured and predictable in its application to rural and regional Australia, so should it be to liner shipping.

## **2. Purpose of Review**

NFF believes that review of legislation governing competition, demands more than indiscriminate dismantling of regulation. Developing more competitive markets requires careful design of regulatory systems that acknowledge the nature of the service or products, the participants and the market in question, so that the nation may produce outcomes that are efficient and which maximise economic benefits. It should be quite clear, however, that the NFF has a predisposition towards maximising competition within the Australian economy and in supporting measures to increase competition as these generally lead to greater overall economic efficiencies. It is anticipated that reform based on increased competition will reinforce the fact that Australian agricultural producers are among the most productive and efficient in the world as a result of long exposure to world markets and a preparedness to move in and out of markets in response to demand. It is

with this level of efficiency in mind and our exposure to world markets that drives the NFF position concerning its view of inefficiencies in the transport chain.

NFF agrees with the approach that any special legislative regime must be justified in the context of NCP. It is also incumbent on those whose special interests are protected to justify the continuation of a regime which is antithetical to competition policy. Thus, at the most practical level, the Commission should seek for those who benefit from Part X to provide evidence that its rationale as a means by which low cost provision of reliable and frequent shipping services are provided is currently justified.

### **3. Gradual Change Needed**

Essentially NFF is anxious to avoid naïve analyses of competitive situations. We understand that shipping to and from Australia has been supplied by a small number of relatively large corporations which are foreign owned. Accordingly, there is an oligopoly of sellers. Clearly, the countervailing power produced by organising buyers needs to be considered as one of the possible courses to adopt or maintain in the context of Part X or in any legislation that may replace Part X. Logically, therefore, one of the objectives of this review, as with the 1993 review, should be to ensure that Australia has a comprehensive, regular and frequent shipping service. That comprehensive, regular and frequent shipping service should also be structured so that freight rates to and from Australia are minimised.

The impetus for the arrangements which Part X currently protects comes from the demand by shippers for regular and frequent sailings to transport their goods to and from markets. This is especially so with agricultural products. The argument in favour of the arrangements derives from a construct along the following lines. Where no particular company has resources to satisfy the demand that exporting nations such as Australia require to be satisfied, the option which occurs is for

several companies to join forces to create the necessary supply. Further, once these suppliers have pooled their resources the intention is for a necessary limitation of the normal commercial competition between members which would exist when operating in a strict competitive model. The limitations on competition include pooling resources, providing cargo space on each other's vessels and agreements to set freight rates jointly. These requirements apply to all participants in the liner shipping market and thus arises the "necessary" exemptions from section 45 and 47 of the Act conferred by Part X.

This descriptive analysis immediately raises the question as to whether or not, if Part X was repealed, would conferences be possible at all under the law? The answer is, of course, in the affirmative. Certainly, the issues paper published by the Commission raises a number of choices as to how authorisation might be considered as a proper mechanism for conferences to continue. Further, the issues paper, at page 17, discusses the issue of the utilisation of a form of notification procedure, similar to that currently available for actions that would otherwise breach the exclusive dealing provisions of section 47 of the Act. Generally, we fully support the fact that Part VII outcomes mean that the onus is placed upon the proponents to justify the anticompetitive conduct. However, in the first instance, it may well be appropriate to reverse that onus. We support the utilisation of options such as those described in the Issues Paper to achieve the objectives and recommendations set out in the NFF's submission provided in 1993 to the then Brazil Review which we are aware is held by the Commission.

#### **4. Recommendations**

In our 1993 submission we suggested that there be a measured and predictable withdrawal of the protection offered by Part X of the TPA. Because the issue of whether or not market failure would occur in the absence of Part X is very difficult to test, the protection that NFF then suggested to assist the conferences was that

the impact of the withdrawal of the protection offered by Part X should initially be tested by deregistration of conferences on those routes with high traffic volumes and substantial non conference competition. With the advent in recent times of increased competition from non conference groups, this recommendation appears to continue to be sound.

In the context of the 1993 review, NFF suggested that those organisations which then availed themselves of Part X of the Act be guaranteed access to Part VII authorisation for a period of three to five years with such authorisations subject to revocation in the event that abuse of market power is proven. All of these mechanisms would increase the transparency of the arrangements for liner shipping which Part X currently does not afford. Further, it was true in 1993 and it is still true today that it is difficult if not impossible for users to be sure of the benefits or otherwise of Part X while its provision remain in place. Users clearly have no basis for comparison. In effect, the use of Part X has become institutionalised in Australia. Accordingly, we underline the view that there should be a measured and predictable withdrawal of the protection offered by Part X of the Trade Practices Act, utilising one of the options from the issues paper or another option which incorporates the matters raised in this submission.