

FACSIMILE COVER SHEET

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Productivity Commission

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From: Richard Calver, Director Industrial Relations

Date: 22 July 1999

Subject: **Position Paper – International Liner Cargo
Shipping: A Review of Part X, Trade Practices
Act 1974 (the Act)**

Pages: 2
(Including this one)

The National Farmers Federation (NFF) made a submission dated 20 May 1999 to the Commission's Inquiry. The thrust of that submission was that a more transparent form of regulation covering international liner shipping should be introduced. The submission highlighted that there is no evidence that market failure would occur if the current law was repealed.

The NFF welcomes the Commission's acknowledgment that further analysis of the extent of competition in liner trades should be undertaken and that the outcomes of that analysis will be included in its final report.

The Position Paper that has been issued, however, reaches the opposite position from that proposed in the NFF submission and, therefore, the further work will assist the community's understanding of this complex area. However, the Commission does find that the repeal of Part X and reversion to the general provisions of the Act and, in particular, the Part VII authorisations, could achieve similar outcomes to Part X. It is thus important that the special characteristics of Part X are viewed in that light: obviously, an exception to the general rules has been created.

The most important question should then be: is that exception completely justified or will the general rules achieve similar outcomes? If the answer to this important question is in the affirmative then the exception should not be permitted to continue. This argument, of course, rests on the notion that as few exceptions as possible to the general rules of the Act should be permitted. In the alternative, a gradual and predictable movement towards the application of the general rules should be implemented so that the issue of market failure may be tested. The NFF acknowledged in its submission that appropriate competition policy must be based upon the nature of the industry under scrutiny and the industry's operating

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environment. However, it is the different fundamental perspective that leads us to the conclusion that the Commission should recommend the application of the Act to conferences.

In particular, we do not believe that the state of the market is directly correlated with the existence or otherwise of conferences. Quite simply, there appears to be excess capacity in the global liner shipping market. This issue is mentioned at page 12 of the Position Paper. However, neither the notion that the conferences themselves create excess capacity or the idea that conferences can maintain high rates in the face of the fact that overcapacity persists in the market, can be supported.

Overcapacity arises despite the activities of conferences not because of them. Outcomes favourable to shipping interests that rest on the fact of overcapacity and ease of entry into the market are therefore not, we would argue, the pertinent factors to consider. One of the rationales for forming a conference must be to strive to maintain rates. This aim has been frustrated by conditions of oversupply. The response to this argument is, of course, that market conditions are not being affected by the collusive behaviour of the conferences. However, the argument does mean that the issue must be closely scrutinised and that the legislation should be as transparent as possible.

The Commission has noted that a number of processes under Part X are transparent. We believe that, if retained, the Part X provisions should be made more transparent by exposing the registration process to public scrutiny. Having said that, however, we believe that the authorisation process (in "block" form or as currently established under the Act) would raise the level of transparency and should thus be favoured.

Finally, the authorisation process would require, as noted at page 109 of the Position Paper, carriers to convince the Australian Competition and Consumer Commission (ACCC) that the benefits to shippers of conference arrangements outweigh the anti-competitive consequences of their operation. The ACCC would also be able to initiate reviews of the arrangements and monitor their implementation. Hence, if the Commission believes that the current advantages of conferences in fact outweigh their anti-competitive detriment, the Commission could logically recommend that a "block" authorisation process should be established. If there were to be changes in the complexion of the industry, the statutory provisions concerning authorisation that normally apply could be invoked by the ACCC. This proposal has the advantage of eliminating special and separate statutory provisions whilst recognising the issues raised by the Commission in its Position Paper.

We look forward to the release of the Commission's report.

Regards,



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