

***Australian Consumers' Association***

***Submission to the Productivity Commission***

***International Liner Cargo Shipping:  
A Review of Part X of the Trade Practices Act 1974***

***September 1999***

## ***Background***

The Australian Consumers' Association (ACA) takes an interest in the Productivity Commission's "International Liner Cargo Shipping Review of Part X of the Trade Practices Act" from two perspectives: the importance of a competitive shipping marketplace for consumers; and need to eliminate unjustified anti-competitive exemptions to the Act.

These days a large proportion of consumer goods enter Australia in shipping containers. Products such as clothing, electrical goods, white goods, brown goods, CDs and books are frequently purchased by Australian households, and the competitiveness of shipping companies delivering to the Australian market has a direct impact on consumer welfare. The shipping market serving Australia is characterised by robust competition, resulting from global industry dynamics (as opposed to any link to the operation of Part X exemptions).

The ACA sees no justification for maintaining Part X of the Trade Practices Act. We believe Part X, which allows anti-competitive behaviour that would not otherwise be allowed under Part IV of the Trade Practices Act, can be historically justified but no longer passes the test provided under National Competition Policy.

## ***Introduction***

Major changes have occurred in international liner shipping over the last decade. Significant increases in vessel size have been instrumental in reducing operating costs. Shipping companies now operate globally offering world wide door-to-door service. For Australia, availability of efficient liner shipping services is crucial for access to export markets and for the importation of manufacturing and other goods upon which Australia is so reliant.

Given these factors - major changes within the shipping industry and Australia's dependence in a global economy on shipping services - a review of the regulations which govern the market for liner-shipping services to and from Australia is timely.

The current review of Part X of the *Trade Practices Act*, 1974 (TPA) being undertaken by the Productivity Commission is part of Australia's agenda under National Competition Policy (NCP). NCP aims to foster competition between providers of goods and services to enhance community welfare. Under NCP new regulation subject to increased scrutiny with regards to the public costs and benefits of that regulation *and* existing legislation is subject to review.

The review of Part X currently being conducted by the Productivity Commission has to be understood in this context. That is, legislation should not restrict competition unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs and the objectives of the legislation can only be achieved by restricting competition.

However, from the recent Position paper issued by the Productivity Commission which outlines their preliminary assessment of the review of Part X it is not clear that the intent of the legislative review process has been followed.<sup>1</sup>

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<sup>1</sup> Productivity Commission 1999: International Liner Cargo Shipping: A review of part X of the Trade Practices Act 1974, Position paper, Melbourne, June.

### ***Competitive market conditions operate for Australian shippers***

Australia has benefited from conditions on the global liner shipping market which have driven global freight rates down over the last decade. The evidence seems to suggest that there has been a strong correlation between global freight rates and Australian freight rates. Independents have been playing an increasingly important role in almost all commodity segments, trade routes and significantly in services to regional ports.

It can therefore be concluded that there is currently robust competition in the shipping market which serves Australia. Given the current trends in shipping - the emergence of large global shipping operators, the increasing market penetration of independents, the role of hub and spoke networking and the increased merger activity - there is no reason to believe that the level of competitive activity will be diminished.

### ***Part X an anomaly in the competition policy framework***

Part X allows specific forms of anti-competitive behaviour involving liner shipping conferences which could otherwise contravene competitive conduct rules in Part IV of the TPA. While there have been historical reasons for granting these types of special exemptions, currently Part X is the only part of the TPA providing industry specific exemptions for anti-competitive behaviour.

### ***Implied causal link in Productivity Commission's position paper***

The Productivity Commission's position paper acknowledges the competitive conditions operating in the liner shipping market. However, the Productivity Commission seems to imply that, since Part X is the current regulatory regime for liner shipping, a causal relationship seems to exist linking competitive market conditions to the operation of Part X exemptions.

However, the Australian shipping market is a part of a global shipping market and subject to global factors. Give the competitive nature of the market there is no obvious need for the liner shipping industry to be provided with special exemptions from competition law.

If the Productivity Commission does not recommend that Part X should be repealed then it needs to be demonstrated that there is a clear net public benefit flowing from these special exemptions for anti-competitive behaviour.

### ***Conclusion***

If liner shipping conferences are to receive special exemptions from competition law as they do under Part X it must be demonstrated that this is in the public interest. It also must be shown that there are not viable alternatives for regulating liner conferences consistent with current competition law. In fact, we understand a range of alternatives have been flagged at different times and in different forums. In addition a range of suggestions have been made about transitional regimes to allow industry adjustment to a new regulatory environment.