

**2004 Review of Part X of the Trade Practices Act 1974:
International Liner Cargo Shipping**

Initial Submission by the International Chamber of Shipping (ICS)

1. The International Chamber of Shipping (ICS) is grateful for the opportunity to submit comments to this Review, the outcome of which could have important implications for the global shipping industry in its entirety, not just those companies involved in Australian trades.
2. ICS is the international trade association for the shipping industry, representing all sectors and trades including international container ship operators. The membership of ICS comprises national shipowners' associations from 39 countries, including the Australian Shipowners Association (ASA). Shipping Australia Ltd, which also represents non-Australian shipping lines that trade to Australia, is an Associate Member of ICS. Our views are fully aligned with the submissions to this Review being made by ASA and Shipping Australia Ltd.
3. ICS acknowledges the Productivity Commission's reasons for undertaking this Review. However, ICS strongly favours the retention of a regime for liner shipping under Australian competition rules which will allow the preservation of the conference system and Discussion Agreements. Discussion Agreements in the Australian trades continue to have a stabilising effect, assuring shippers (and consumers) of regular services while contributing to the provision of adequate and efficient transport.
4. The main purpose of this short submission is to emphasise that whatever might be decided for reasons of national competition policy, ship operators that trade to Australia are part of a global shipping market where the various maritime competition rules that apply in the major trading areas are currently broadly in alignment. Existing competition rules in Europe, United States and Japan reflect the recognition amongst governments that limited "anti-trust" exemptions for liner shipping ensure that shipping lines are able to increase their range of services and markets in order to satisfy shippers' (and consumers') demands more effectively in terms of frequency, reliability, quality and price.
5. Although the European Commission is currently reviewing the existing block exemption of liner conferences from EU Competition rules (Regulation 4056/86), the final outcome of this exercise - the results of which will require consideration by EU Member States and the European Parliament - is still far from certain. While the Commission has publicised its preference for abolishing the block exemption, its initial views are largely based on legal arguments concerning the application of general EU competition law, and it has yet to give proper consideration to the unique nature of global shipping,

or the practical effects of abolishing conferences on the interests of consumers. Moreover, at an Advisory Committee meeting with EU Member States held in May, the vast majority of EU governments expressed their desire to oppose the abolition of the EU block exemption and insisted on options to replace the present regime. Therefore, given the global nature of the shipping industry, and the need to maintain uniformity between maritime competition regulations, it is strongly recommended that Australia defers reaching any firm conclusions until the results of the EU exercise are known.

6. ICS notes that the Productivity Commission Issues Paper, published in July, refers to the OECD report published in 2002. It is important to note that this report was produced by the OECD Secretariat and did not enjoy the broad support of OECD member governments. ICS believes that the OECD Secretariat's proposals were made in the absence of convincing analysis, and essentially responded to a perceived demand for reform, rather than providing an objective response to the issues confronting liner shipping.
7. The current system of liner conferences that operates worldwide serves shippers and their customers well by allowing 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. Indeed, the importance of mitigating trade fluctuations appears to be more pronounced in the current climate of economic volatility and the short term impact of unforeseen events such as the 9/11 terrorist attacks. The conference system, which permits discussions on capacity management, helps ship operators to limit extreme rate fluctuations, and helps them to commit to the long term investments required to operate their high value assets (ships, containers and logistics infrastructure).
8. Reliable and stable liner services have been the backbone of world trade and will continue to be so in the future. Nations such as Australia, which rely on maritime trade to sustain the wealth of its citizens, cannot do so without reliable and stable regular liner services. Availability and stability of these services are essential elements for long term trade strategy policies. This is the main benefit to transport users and consumers.
9. In contrast to international air freight, where government to government Air Service Agreements covering passenger aircraft (which carry the bulk of air freight) have helped to restrict capacity, liner shipping services have long depended on structures such as conferences and Discussion Agreements in order to cope with fluctuating business cycles.
10. To organise reliable regular services, and a long term service commitment, a stable environment is essential. But the very nature of international liner services creates a de facto unstable environment since there is complete free access to liner shipping markets (new entrants can come in, and established

carriers can extend their activities to new markets) and significant capital investment is required in vessels, containers, logistic systems and other equipment, and to provide long term regular services irrespective of trade variations. Entry of short term services is relatively easy through the use of chartering tonnage. Since the regularity of services is guaranteed, surplus capacity is natural in the liner sector. The available capacity needs to exceed shipped volumes if operators are to provide capacity taking into account the constant market changes, as well as cyclical seasonal peaks in demand and imbalances between demand for the inbound and outbound legs of the voyage. Container ship capacity that is not filled when a vessel sails cannot be stored. The potential to earn revenue from the available capacity on any scheduled sailing is lost once the vessel departs.

11. ICS would add that liner shipping markets are remarkably open and conferences themselves do not create any barriers to free access to trade. In co-operation with governments and bodies such as the World Bank, the industry is active in encouraging the elimination of any limited protectionist measures that may still arise. However, the best opportunity to address these concerns is in the context of the negotiations on maritime transport services that are currently underway at the World Trade Organization.
12. The liner sector is also very competitive and there are large, well organised independent lines that are used by shippers interchangeably with conference lines, the costs of switching between carriers being insignificant. It is also important to recognise the power enjoyed by large shippers and NVOCCs, and that their control of large volumes of cargo provides them with significant negotiating strength.
13. In the unfortunate event that Australia were to conclude that the exemptions for liner conferences were to be abolished, it is important to consider that this could be likely to lead to further concentration in liner shipping serving Australia, thus reducing the extent of competition.
14. ICS hopes that these brief comments are useful. Their principal purpose is to encourage Australia to take full account of regimes governing liner conferences in the rest of the world and the recognition given by other competition authorities to the benefits of conferences in terms of efficiency of world trade, and the implications this has for national economies and the interests of consumers - especially those, in a nation such as Australia, that have a high dependency on maritime transport for the provision of imported goods.

International Chamber of Shipping
12 Carthusian Street, London EC1M 6EZ , United Kingdom
Tel + 44 20 7417 8844 Email simon.bennett@marisec.org
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