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17 December 2004

Review of Part X of TPA Inquiry  
Productivity Commission  
PO Box 80  
Belconnen ACT 2616

This submission is in response to the invitation from the Productivity Commission (**Commission**) to provide further comments in relation to the 2004 Review of Part X of the *Trade Practices Act 1974: International Liner Cargo Shipping – Draft Report* released on 22 October.

The Australian International Movers Association (**AIMA**) is, as previously advised, a Secondary Designated Shipper Body declared as such by the Minister for Transport and Regional Services under section 10.03(2) of the *Trade Practices Act*.

This submission will take the form of comments on each of the recommendations in the Draft Report referred to above.

DRAFT RECOMMENDATION 7.1

***The Commission considers that, if Part X is retained, its principal objectives should be to:***

- ***facilitate efficient coordination and joint provision of liner cargo shipping services within a pro-competition framework; and***
- ***assist Australian exporters and importers to have access to liner cargo shipping services of adequate frequency, geographical coverage and reliability at freight rates that are internationally competitive.***

AIMA RESPONSE

AIMA has no issue with this draft recommendation because it is in favour of the retention of Part X of the *Trade Practices Act 1974*. In its experience the Part X regime has created a situation where there are a number of ocean carriers with which it is able to negotiate “outwards loyalty agreements” on defined in Section 10.02(1) of the *Trade Practices Act* on behalf of its members which has provided those members and through them members of the public who, for a variety of reasons require their personal goods and chattels to be shipped from Australia to overseas locations, with liner cargo shipping services of adequate frequency, geographical coverage and reliability at freight rates that are internationally competitive.

From enquiries AIMA has made of organisations providing similar services to it in other regions of the world, particularly Europe, it is satisfied that the rates it is able to negotiate with

ocean carriers in these outwards loyalty agreements are internationally competitive and provide the other benefits referred to above.

DRAFT RECOMMENDATION 7.2

***The regulation of liner shipping agreements should be strengthened by adopting a selective approach aimed at allowing only those carrier agreements which are likely to provide a net public benefit to Australia.***

AIMA RESPONSE

Again, AIMA agrees with this draft recommendation but notes in its experience that it has been able to negotiate outwards loyalty agreements with various ocean carriers which deliver a number of benefits to its members and ultimately to the public who require their personal and domestic goods and chattels to be shipped from Australia to a variety of overseas locations.

DRAFT RECOMMENDATION 8.1

***Part X be repealed and the liner cargo shipping industry be subject to the general provisions of the Trade Practices Act 1974. However, transitional arrangements should be introduced which provide interim authorisation for existing Part X agreements and prioritise the review of these agreements according to their risk of anticompetitive detriment.***

AIMA RESPONSE

AIMA is not in favour of the repeal of Part X of the *Trade Practices Act 1974* because of the expense and delays associated with the authorisation process available under Part VII of the *Trade Practices Act 1974*. In essence AIMA believes that the effect of implementation of Draft Recommendation 8.1 would be to make Australia less attractive as a destination for ocean carriers, which will reduce the pool with which it is able to negotiate arrangements on behalf of its members. It is likely this would lead to an increase in freight rates with reduced frequency, geographical coverage and reliability which would prejudice those residents of Australia who have to relocate to other countries from time to time for a variety of reasons.

It would also mean that AIMA would have to seek authorisation for its outwards loyalty agreements which would be both an expensive (in terms of legal costs and executive time) and a time consuming task. It would have to bear these costs to preserve the benefits that essentially its customers currently enjoy under the existing outwards loyalty agreements.

This makes no sense in AIMA's view.

DRAFT RECOMMENDATION 9.1

***If Part X is retained, one option is to exclude from eligibility for registration under Part X, agreements that contain provisions:***

- ***for the fixing or other regulation of freights rates;***
- ***for the setting of non-binding guidance on freight rates;***

- ***for freight rates to be discussed between members; or***
- ***that seek to limit the maximum level of capacity on offer.***

AIMA RESPONSE

AIMA has no firm view on this recommendation. It would be opposed to the recommendation if it made Australia less attractive as a destination for ocean carriers.

DRAFT RECOMMENDATION 9.2

***If Part X is retained, a second option is to exclude discussion agreements from eligibility for registration under Part X.***

AIMA RESPONSE

Again, AIMA has no firm view in relation to this recommendation.

DRAFT RECOMMENDATION 9.3

***If Part X is retained, under either option, agreements should not be eligible for registration if they contain provisions that:***

- ***prohibit members from engaging in negotiations for individual service contracts; or***
- ***require members to disclose negotiations or make public the terms and conditions of such agreements; or***
- ***adopt rules or requirements affecting the right of members to enter into individual service contracts; or***
- ***allow the discussion or development of non-binding guidelines that relate to the terms and procedures of a member's individual service contract.***

***Part X should be amended to prohibit carriers from discussing or disclosing, directly or indirectly, the provisions of individual service contracts to other carriers.***

AIMA RESPONSE

AIMA supports this draft recommendation.

DRAFT RECOMMENDATION 9.4

***If Part X is retained, in the event of a review under the enforcement provisions, the following changes should be made.***

- ***the parties to a registered agreement be required to demonstrate that the conduct under review has resulted, or is likely to result, in a net public benefit;***
- ***the "exceptional circumstances" provision be replaced by the "material change in circumstances" provision from Part VII;***

- ***inquiries conducted by the ACCC under Part X be undertaken as a consequence of referral by the Minister of a complaint by an affected person, or be initiated by the ACCC if it establishes that there has been a material change in circumstance;***
- ***the powers of the Minister responsible for shipping to revoke exemptions under Part X, or to impose any other penalty available under Part X, be transferred to the ACCC;***
- ***a range of penalties, including fines, be introduced for breaches of the procedural provisions of Part X; and***
- ***the use of undertakings be limited to situations where deregistration is threatened, and not be available as a means of avoiding fines resulting from procedural breaches of Part X.***

AIMA RESPONSE

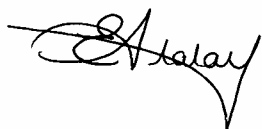
AIMA generally supports this recommendation provided it does not make Australia less attractive as a destination for ocean carriers.

**Summary**

It is AIMA's belief that under Part X, Australia enjoys shipping services of adequate frequency, geographical coverage and reliability at rates that are internationally competitive. In what has been presented in the draft report we are not confident that this will be the case if Part X is repealed. We also believe that under Part X AIMA has been able to negotiate on behalf of its members outwards loyalty agreements, which deliver service levels and freight rate benefits that, are passed on to the relocating public. Should AIMA have to seek authorisation for these agreements from the ACCC by demonstrating a public benefit, the costs and time involved to achieve this would be significant. Inevitably our members would have to foot these additional costs which would be passed on to their customers the relocating public. It would therefore be the public's loss.

Yours faithfully

**Australian International Movers Association**



Elif Atalay  
Chairman of AIMA