



FONASBA

**THE FEDERATION OF NATIONAL ASSOCIATIONS OF
SHIP BROKERS AND AGENTS**

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**FONASBA INPUT TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION ON THE REVIEW OF SHIPPING
EXEMPTIONS UNDER THE COMPETITION AND CONSUMER ACT**

The Federation of National Associations of Ship Brokers and Agents (FONASBA) is the international representative body for the ship broking and ship agency sectors of the international maritime industry. Its members are the national associations in forty three major maritime nations, with a further four countries represented by individual companies where national associations do not presently exist. A copy of our membership list is attached.

FONASBA promotes, protects and represents the views of its members in all relevant fora, having consultative status with the International Maritime Organisation, the United Nations Conference on Trade and Development and the United Nations Commission on International Trade Law, as well as a Memorandum of Agreement with the World Customs Organisation. Through its European Committee, the Federation is also the representative body for ship brokers and ship agents to the European Commission and other European Union institutions. FONASBA also works in close cooperation, and enjoys reciprocal membership, with industry bodies such as the Baltic Exchange, BIMCO, INTERTANKO, Intercargo and the World Shipping Council, and European organisations representing shipowners, ports, terminal operators, port service providers and similar. It also provides direct support to individual member associations as and where required or appropriate.

FONASBA's member in Australia is Shipping Australia Limited (SAL) and through that organisation we have been made aware of the potential for changes being made to the exemptions currently made available to liner shipping services through Part X of the Competition and Consumer Act. The impact of such changes would, we believe, be detrimental to the Australian shipping sector and to ship agents in particular, and so we are taking this opportunity of expressing our concerns on the issue to the Australian Competition Review. In doing so we are aware of the issues paper submitted to the Review Panel by Shipping Australia Limited.

EXISTING INTERNATIONAL SHIPPING COMPETITION AGREEMENTS

The Review Panel will already be aware that similar exemptions from the need to fully apply national competition measures to liner shipping services are in force in a number of Australia's major trading partners, including China, Japan, Korea, Singapore and the USA.

The European Commission is in the process of reviewing its own competition regulations with regard to the activities of liner service consortia and in this case the Commission are

expected to support the retention of the measures enshrined in the current Block Exemption Regulation (Regulation 906/2009) once it expires in April 2015. This positive stance by the European Commission reflects an understanding of the benefits of the exemption of liner shipping services from certain sections of Article 101(1) of the Treaty on the Functioning of the European Union, commonly known as the Lisbon Treaty.

Clearly, any decision to revoke the present Part X exemptions could lead to Australia taking a countervailing position to that prevailing amongst other major trading nations, whilst at the same time significantly disadvantaging Australian shippers and consumers.

BENEFITS OF LIMITED EXEMPTIONS FOR LINER SHIPPING

We are aware that SAL have already stated a number of the advantages to Australia of limited exemptions for the provision of liner shipping services and clearly those views are shared by those other nations with whom Australia trades. In Europe, the Council of Ministers, European Parliament and the European Commission are all united in acknowledging those benefits. Referring in 2009 to the current (2010-2015) exemption regulation, the Council stated:

“Joint-service agreements between liner shipping companies with the aim of rationalising their operations by means of technical, operational and/or commercial arrangements (described in shipping circles as “consortia”) can help to provide the necessary means for improving the productivity of liner shipping services and promoting technical and economic progress”. Council Regulation (EC) No. 256/2009

In addition, the Commission stated:

“Users of shipping services provided by consortia may benefit from the improvements in productivity which consortia can bring about. Those benefits may also take the form of an improvement of the frequency of sailings and port calls, or an improvement in scheduling as well as better quality and personalized services through the use of more modern vessels and equipment, including port facilities”. Commission Regulation 906/2009

Since those statements were made, the global liner shipping industry has undergone significant changes, driven both by the stresses of the economic downturn and by ongoing technical developments. These have seen transport volumes drop significantly, bunker prices almost double and ever more strict limits on ship emissions being imposed in a number of key locations worldwide. The sector reacted by cutting schedules, implementing slow steaming regimes, introducing larger vessels on all routes and maximising the benefits available to all parties in the transport chain through participation in consortia.

The benefits of sharing vessels in consortia are many, and apply across all areas of the liner shipping industry. They include the ability to service the widest possible spread of markets and routes, maximise vessel loadings, meet shipper demands for global services and ensure the most effective vessel usage for the demand conditions. Serving the widest possible spread of markets ensures that shippers and receivers have a wide range of services from which to choose, promoting competition between service providers and thus lowering shipping rates. Maximising vessel loadings allows the utilisation of larger and more fuel efficient vessels, again lowering shipping rates but also reducing vessel emissions. Global shippers require lines to offer worldwide through carriage contracts, regular sailings and competitive rates. Not all routes need the same size vessels and indeed the optimum vessel size for a particular trade may vary from time to time, for example demand may increase during peak import or export seasons and decline at other times. The sharing of vessels and the opportunity for one line to ship its containers on those of another consortium member allows the lines to obtain all these

benefits, most of which would be beyond their ability and capacity were they forced to operate in direct competition.

DISADVANTAGES OF NO EXEMPTIONS FOR LINER SHIPPING

Should the current regime of limited exemptions be repealed, it is self evident that liner shipping operators would be faced with immediate and unfettered competition on the routes they serve. Whilst this might at first appear to be to the advantage of shippers and importers, the reverse would in fact be true. Confronted by the need to significantly increase fleet sizes and route provision at the same time as freight rates are falling, all lines will undertake radical reviews of service levels, route networks and sailing frequencies in order to concentrate on those routes which are most profitable to them – the routes from Asia to Europe and the West Coast of the USA being the most likely choices. Globally, this will inevitably lead to shippers and importers being faced with less choice of carriers, increasing rates, reducing frequencies and a smaller number of ports being served. It is also possible that some of the smaller container lines, some of whom even today remain in a precarious financial state, will be forced out of business, further reducing shipper choice and allowing those lines remaining in the trade to dominate, setting rate levels and sailing schedules that favour themselves, not the shipper. Clearly such actions would result in the cost of imports and exports rising to uncompetitive levels.

IMPACT ON AUSTRALIA OF REPEAL OF PART X

For a country such as Australia, almost totally reliant on seaborne trade, the detrimental effects of the repeal of Part X, or any other moves to remove the current exemption regime for liner consortia, would be significant. Furthermore, and given the relatively small size of the country's market for shipping services and its geographical location, the disadvantages mentioned above would be considerably magnified.

Sea transport charges, and therefore the import or export cost of goods, would rise significantly in line with increased freight rates, delivery times would increase as sailing schedules and frequencies are reduced and in some cases goods would be required to take a longer and more complicated route. In addition, smaller, less environmentally friendly and fuel-efficient vessels would be scheduled on to the Australian trades, increasing ship emissions and as well as costs.

We also understand that apart from the financial and operational impact on the Australian economy of a repeal of Part X the proposals to regulate any form of future consortia or service sharing arrangements under Part VII of the Competition and Consumer Act will lead to increased compliance costs and procedures. It goes without saying that these impediments would act as a further disincentive to shipping lines to provide the required levels of service so vital to Australia's economic wellbeing.

CONCLUSION

In conclusion, FONASBA fully supports the views expressed by the international liner shipping industry of the benefits of the present regimes of limited exemptions from competition law for liner services.

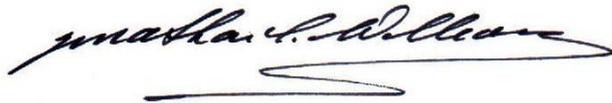
It is widely agreed that liner shipping consortia increase competition and expand service levels, thus providing shippers and consumers with reduced costs, more frequent sailings and increased choice. Those benefits are especially important today in the face of rising fuel prices, modest trade growth, the requirement to reduce ship emissions and the economic pressures on carriers to reduce costs and maximise the efficient use of vessels whilst maintaining quality service provision.

The provisions of Part X and the other block exemption regulations in place elsewhere allow carriers to enter into, leave or amend consortia based on practical considerations and economic efficiency. They also, ensure legal certainty, provide risk management and reduce bureaucracy. Consortia are an integral and important part of the global liner shipping industry and best serve the interests of all parties; carriers, shippers, importers and consumers.

For all these reasons, it is clear that the extension or retention of exemptions provided under Part X should be supported. As stated previously, the European Commission is fully expected to renew its block exemption regulation from April next year and there is no reason to expect that other regulators will not continue to support their current arrangements when they are due for renewal.

In view of this, FONASBA feels that any decision by the Review Panel to repeal or otherwise reduce the facilities available to shipping lines under Part X would be misjudged, detrimental to the Australian economy and counter to the current view elsewhere. We therefore hope that the Review Panel will take note of the views expressed by SAL and this Federation as well as the prevailing global view and having done so ensure the continuation of the present exemption regime.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan C. Williams', with a long, horizontal flourish underneath.

JONATHAN C. WILLIAMS FICS
GENERAL MANAGER

CC: Cdre. R. Nairn AM,
Chief Executive Office
Shipping Australia Ltd.