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AUSTRALIAN COMPETITION POLICY REVIEW ISSUES PAPER APRIL 2014 STATUTORY EXEMPTIONS AND EXCEPTIONS

1. The International Chamber of Shipping (ICS) is grateful for the opportunity to submit comments to the Australian Competition Policy Review with respect to its April 2014 Issues Paper.
2. ICS is the principal international trade association for shipowners, representing all sectors and trades, including containership operators. The membership of ICS comprises national shipowners' associations from 34 countries, including the Australian Shipowners Association, plus Shipping Australia Limited as an Associate Member. Collectively, ICS represents over 80% of the world's merchant shipping tonnage.
3. ICS fully supports the submission made by Shipping Australia Limited in support of the maintenance of Part X of Australia's Competition and Consumer Act (CCA). ICS agrees that the current regulatory environment in Australia encourages container lines to compete robustly in terms of the quality of service that they provide and that the current approach, which has continued to be applied since the last major review of Part X in 2005, does not inhibit competition.
4. ICS wishes to make a few additional remarks from an international perspective. In particular, it is emphasised that ship operators trading to and from Australia are part of a global shipping market, and that the various maritime competition rules that apply globally (particularly those within the Asia Pacific region) are currently in broad alignment. In addition to the impact that it could have on the shipping industry's customers in Australia, any major changes to Australia's current maritime competition regime could also have negative implications for the liner (container) shipping industry globally.
5. Part X the CCA permits shipping lines to organise both consortia and discussion agreements. These practices have existed worldwide for decades and have facilitated the phenomenal success of international container shipping for almost 40 years, helping to guarantee the adequacy and efficiency of maritime services to the shipping industry's customers.
6. Such practices allow 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. Co-operation amongst liner companies helps them to commit to

the long term investments required to operate their high value assets, i.e. ships and logistics infrastructure costing hundreds of billions of US dollars (a modern large containership can cost well over a hundred million US dollars to build, and millions of dollars a year to operate).

7. The available capacity in shipping always needs to exceed volumes shipped if operators are to be able to guarantee capacity to customers, taking into account the constant market changes, significant cyclical seasonal peaks in demand and, importantly, imbalances between demand for the inbound and outbound legs of voyages. Ship capacity that is not utilised when a ship sails to or from Australia, for example, cannot be stored for later use. The potential to earn revenue from the available capacity on any voyage is lost once the vessel departs.

8. Importantly, the existence of discussion agreements and consortia has not impeded capacity growth or the increase of service levels provided by carriers in order to meet cargo demand. According to Sealntel, the average vessel size in the Asia-Oceania trade has increased by over 20% and weekly capacity has increased by 43% since 2010. Containerised volumes in this trade have increased by over 17% in the same period.

9. The continued existence of anti-trust exemptions is also beneficial to the shipping industry's efforts to improve its environmental performance, including efforts to deliver reductions in its carbon dioxide emissions. The impact of improvements to the operational efficiency of a ship will be moderated if the cargo capacity of that vessel is not fully utilised. Co-operative mechanisms such as vessel sharing can allow carriers to utilise cargo space much more efficiently than they could do on their own.

10. ICS acknowledges the intention of the Australian Government in wishing to examine carefully practices that might distort competition. However, ICS believes that it remains appropriate for exemptions or exclusions to apply to certain carrier agreements and that the existence of such agreements yields net benefits to shippers, exporters and consumers in Australia, as well as to the economy of Australia as a whole.

11. A nation such as Australia, with its relative geographical isolation, and its need to deliver large volumes of exports to trading partners and to facilitate the importation of components and raw materials, is dependent on maritime trade to sustain the wealth of its citizens. This cannot be achieved without reliable and stable shipping services. Ensuring the availability and stability of shipping services in Australia would therefore seem to be an essential element of any long term trade strategy.

12. ICS encourages Australia to take full account of current competition regulations in the United States and Australia's trading partners, including China, Chile, Japan, India and Singapore (all of which have recently reviewed their application of competition regimes to shipping). These regimes reflect their governments' recognition that limited anti-trust exemptions are necessary to ensure that shipping lines are able to increase their range of services and markets, thereby satisfying shippers' (and consumers') demands more effectively in terms of frequency, reliability, efficiency, quality and price.

13. Following the European Union's (EU) 2008 decision to prohibit liner conferences there has not (contrary to the expectations of the European Commission) been a wider shift towards the repeal of anti-trust immunities. In June 2011, following a long review, the Japanese Government decided to retain its Antitrust Immunity System applicable to carrier agreements (including the operation of liner conferences) until 2015. Japan announced that it had found no positive grounds for repealing a system which has been retained by many of Japan's major trade partners and, in particular, concluded that the

EU prohibition had led to increased volatility of freight rates in European trades, a rise in surcharges levied by individual carriers, and contributed to tighter market conditions.

14. Furthermore, a 2012 US Federal Maritime Commission (FMC) study aimed at determining the impact of the EU's 2008 conference prohibition concluded that the repeal of the block exemption has not resulted in any relative decline in EU freight rates compared with Far East/US trades and observed that there appears to have been a comparative increase in rate volatility in EU/US trades. (The study can be downloaded at www.fmc.gov/assets/1/Documents/FMC_EU_Study.pdf.)

15. Shipping Australia Limited's submission provides information on the anti-trust exemptions currently provided for shipping under competition regulations in Chinese Taipei, Indonesia, South Korea and Vietnam.

16. The various maritime competition rules that apply in the Asia Pacific are currently in broad alignment and ICS suggests that whatever Australia decides should at least be consistent with the APEC Guidelines Related to Liner Shipping adopted by the APEC member economies in June 2011 in Brisbane.

17. While ICS supports the maintenance of all existing anti-trust exemptions under Part X of the CCA, with respect to consortia it is worth noting that the European Commission appears to recognise the benefits to shipping companies, their customers and the wider public of limited anti-trust exemptions. This was demonstrated in its proposal, in March 2014, to extend the block exemption from competition rules that applies to consortia until at least 2020.

18. To reiterate, any major changes to the current maritime competition regime in Australia could have implications for the liner shipping industry globally, not just for those companies involved in trades to and from Australia. Given the importance of co-operative arrangements to the stable and efficient provision of liner shipping services, such a change could potentially be very damaging for the international liner industry.

19. ICS would add that shipping markets are remarkably open and current co-operative practices do not permit anti-competitive activity or create barriers to free trade. In co-operation with governments, the industry is active in encouraging the elimination of any new protectionist measures that may still arise in international shipping markets, at bodies such as the World Trade Organization.

We hope these remarks are helpful.

Yours faithfully

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International Chamber of Shipping