

17 November 2014

**Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600**



SOUTH AUSTRALIAN FREIGHT COUNCIL



296 ST VINCENT STREET
PORT ADELAIDE SOUTH AUSTRALIA 5015
P +61 8 8447 0688 F +61 8 8447 0606
WWW.SAFREIGHTCOUNCIL.COM.AU

Submission by mail and online at
<http://competitionpolicyreview.gov.au/draft-report/submissions/uploading-submission/?type=formal>

Dear Sir / Madam

RE: Competition Policy Review

I refer to the Australian Government's Competition Policy Review released in September 2014 for public comment and provide the following input for your consideration.

The South Australian Freight Council (SAFC) is the State's peak, multi-modal industry group that advises both the Federal and State governments on industry related issues, and is funded by both governments. It represents road, rail, sea and air freight modes and operations, and assists the industry on issues relating to freight logistics across all modes.

SAFC takes this opportunity to congratulate the Australian Government and the Review Panel on undertaking the Report and advises that our preliminary consultations with industry have generated the comments that follow.

The SA transport and logistics industry is strongly supportive of the principals for establishment and maintenance of a competition regime and institutions that '...focuses on making markets work in the long term interest of consumers', as well as industry. Moreover, SAFC supports the implementation of a regime that incorporates a 'public interest' test as a central tenet of competition policy, effectively a cost-benefit calculation.

In its March 2008 publication *Regulating Freight*, which is available online at www.safreightcouncil.com.au/SAFC%20Regulating%20Freight-FINAL-25mar08.pdf, SAFC outlined six Core Regulatory Principles that should be adhered to when developing and assessing regulatory regimes, and if implemented could improve regulatory compliance and competition in markets, including:

1. Facilitation/Cultural Change – A Partnership Approach

The relationship between government and industry needs to change from that of adversaries to partners. This involves a change in culture from regulation to facilitation, allowing greater flexibility and reflexivity in the regulation process.

In the context of this review, this statement effectively means that Governments and regulatory regimes should work with industry in partnership to ensure that any regulations introduced achieve desired outcomes and do not unnecessarily constrain competition.

2. Communication/Consultation

Open and transparent consultative practises that facilitate positive change should be established between government and industry. Such an approach will open up more effective communication and education of regulations within industry.

Open communication channels can be the conduit to understanding why competition restrictions are (or are not) in place and what impacts are being experienced, and the outcomes that are being achieved.

3. Outcomes Based Approach (allowing industry and government to work together towards mutually beneficial results and greater efficiency)

An outcomes based approach is preferred as opposed to a process based approach, which has a tendency towards over regulation.

When increased competition in markets is the desired outcome, existing and proposed regulation and control of the excesses of competition should be assessed in that context.

4. Principle for Adoption and Review

An open, transparent and documented protocol for the adoption of new and amended regulations should be set in place, providing some level of certainty to industry operators, and affording rights and processes by which regulations can be reviewed. This approach will open up paths of communication and consultation between government and industry.

Regular review will reveal the extent to which expected outcomes have been achieved and will also reveal areas where further improvement could be considered.

5. Harmonisation

Efforts should continue towards the eradication of inconsistent, duplicated and contradictory standards across jurisdictions to ease the regulatory compliance burden on industry. Standards should not be made complementary at the level of the worst performing jurisdiction. Harmonisation with international regulations should also be encouraged.

There can be no doubt that harmonised regulation facilitates efficiency improvement. The relatively recent establishment of national transport regulators promised to make inroads in eradicating the scourge of inconsistent regulation, and specifically the attendant compliance cost penalties. However, the reality is that the coverage of national regulation has been restricted and consequently is restricting competition on a national level. To date the "Yes – But we are Different" mantra has prevailed, and as a result has restricted the benefits of harmonisation that would likely have accrued to the national industry. Efforts should now concentrate on eradicating these regulatory differences between States, across and between the modes.

6. Development of a Light Handed Regime

This concept is aspirational and should contain elements of the above principles, and goals such as:

- » *A general shift towards lower compliance costs*
- » *Regulation not to result in unintended barriers to entry into the industry*
- » *Ensure clawback provisions and black letter regulations do not constrain innovation*
- » *Ensure practical operations are not overly constrained by regulatory compliance*
- » *Ensure that regulations are simple, easy to understand and appropriate for their audience*

A Light Handed regime is always preferred by industry and the community as it minimises the cost impact and restrictions on competition that arise through regulation. Whilst it is an aspirational concept it should be pursued on every occasion.

In response to some of the specific recommendations made within the Review Report SAFC provides the input that follows.

All individual proposals should be subjected to a public review process with ample opportunity afforded to industry and the community to provide input.

- The proposal to introduce changes to the way Heavy Vehicles pay for road access, coupled with changes to the way that road investment is prioritised requires extensive further study, including an assessment of the cost-benefit equation associated with any changes implemented. The national Heavy Vehicle Charging and Investment (HVCI) project which was investigating mass-distance-location pricing options and regimes for government consideration was closed earlier this year (2014) and its work has been discontinued in favour of the State's progressing initiatives outside of that process.

No publicly available recommendations outlining a proposed charging and investment regime have been made available and this likely reflects the fundamental disagreement amongst industry, and between industry and government as to how any new charging regime will work, and whether any actual benefits will accrue to industry, governments or the community.

Industry also held significant concern with the "Big Brother" aspect associated with implementing a broader use of technology such as satellite tracking systems that would ensure the integrity of any proposed charging and investment regimes. Industry was particularly concerned about data security, as well as the potential to use any data collected for other compliance purposes, as well as the potential for the technology to become mandatory if network access was required (such as in the case of Intelligent Access Programs operating in various jurisdictions today).

It was also unclear as to how any funds raised through Mass-Distance-Location charging regimes would be invested in the network, particularly on rural and remote roads and elements of the network that were less utilised by heavy vehicles. Questions also arose relating to 3rd party beneficiaries, including other "Johnny Come Lately" truck operators and passenger vehicles, and how their contribution to network maintenance and investment costs would be calculated and collected.

Nonetheless, SAFC suggests that so as to progress this concept, the National Transport Commission (NTC) and National Heavy Vehicle Regulator (NHVR) could be charged with working in partnership with industry to outline the costs and benefits associated with any proposed national regime, including forecasting impact at a variety of levels.

- The impacts of proposals to remove Part X of the Competition and Consumer Act should be closely scrutinised with a view to analysing the costs and benefits of abolition and those associated with the proposed replacement system involving block exemptions for Liner Shipping Agreements authorised by the ACCC.

Whilst on paper the proposed regime could deliver benefits to the community, the extent of those benefits, as well as the impact upon the shipping industry and its customers, would not be known until the parameters of the Agreements were proposed and considered by all stakeholders. Only then could compliance costs be calculated and the considered reaction of the industry, including both customers and service providers, become known.

It should also be noted that Australian liner shipping trades represents less than 2% of the global liner trade and that liner shipping services are controlled from international boardrooms. Consequently key decisions relating to containerised shipping prices and service levels are made in foreign boardrooms, and these international organisations can be expected to pay little to no regard to positive community outcomes here in Australia, particularly when any changes do not deliver benefits to what is anecdotally described as constrained profitability.

- Finally, SAFC fully supports the Australian Government's review of the Coastal Trading regime and the suggestion that cabotage restrictions be removed.

Whilst SAFC believes that the changes to cabotage laws implemented by the previous government were intended to grow the volume of freight moving on coastal shipping, the reality is that volumes have declined significantly and coastal shipping has lost market share to road and rail transport.

This consequence is negative for the economy, the environment and society as a whole and the restrictions should be eased as a matter of some urgency. Australia as a nation has been missing the opportunity to access available excess shipping capacity on its doorstep, capacity that could be marginally priced to the benefit of our producers and the community as a whole.

Nonetheless, SAFC does take this opportunity to suggest that associated initiatives such as accelerated depreciation available to purchasers of new-build vessels should be kept in place to encourage establishment, expansion and replacement of a domestic shipping fleet and consideration should be given to extending tax concessions of this type to facilitate the retirement and replacement of other outdated items of transport equipment such as locomotives and prime movers. A measure such as this can improve the nation's productivity, as well as the industry's environmental and safety performance.

In closing SAFC contends that a significant amount of additional work is required before these, and many other suggestions within the report can progress towards implementation.

Nonetheless, SAFC urges the Commonwealth Government to progress these works so as any available benefits can be accessed.

Should you wish to discuss any aspect of this submission, or require clarification of any matter raised, feel free to contact me by telephone on (08)8447 0688 or Email: murphy.neil@safreightcouncil.com.au.

Yours faithfully



Neil Murphy
Chief Executive Officer
SA Freight Council Inc