

GLOBAL SHIPPERS' FORUM POLICY SUBMISSION

International Freight Transport Services Inquiry
New Zealand Productivity Commission
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Via Email

Dear Sir/Madam,

Global Shippers' Forum (GSF) Submission to the New Zealand Productivity Commission Inquiry into International Freight Transport Services

1. Introduction

1.1 Global Shippers' Forum (GSF)

The GSF is the global organisation that represents the interests of shippers as users of international freight transport services. The GSF comprises the main national and regional shippers' organisations in Asia, Europe, Africa and North America, representing shippers' organisations in over 50 countries in the world's main trading regions. GSF members represent the vast majority of international trade as importers and exporters of goods and services.

The New Zealand Shippers' Council is a member of the GSF and this submission is made in support and to complement particular aspects of the New Zealand Shippers' Council's submission to the International Freight Transport Services Inquiry.

The GSF is a recognised international non-governmental organisation incorporated in the United Kingdom. The GSF has recently been invited to participate in the work of various international, regional and inter-governmental organisations such as APEC, the ILO, UNECE, IMO and the OECD in regard to international freight transport matters.

The GSF welcomes the opportunity to submit comments to the New Zealand Productivity Commission, which we hope will both assist and support the Commission's inquiry into the efficiency and competitiveness of international freight transport services which is essential to the economic well-being of New Zealand trade in the world economy.

1.2 Scope of the GSF Response

The GSF notes the broad scope of the Productivity Commission's Inquiry. The GSF, therefore, restricts its comments to international freight transport services covered by Part 1 of the Shipping Act 1987, in particular to the exemptions from the normal application of competition rules applicable to shipping services and liner conferences. This submission therefore primarily addresses questions 19-26 in the Issues Paper.

While the GSF does not comment on international air freight in this submission, the GSF notes that, aside from regulatory restrictions that may apply through bi-lateral air services agreements, the civil aviation sector, and in particular the air freight sector, operates

generally in a fully competitive international air transport market subject to the normal application of competition rules.

This is important in the context of liner shipping, as the air transport market exhibits very similar characteristics to that of the shipping market. For example, both provide fixed scheduled services, have high fixed costs, are cyclical in nature and are subject to seasonal fluctuations in demand.

Moreover, these characteristics are notable in many other industry sectors which operate effectively and competitively within a fully liberalised competitive market without exemption from the normal application of competition rules. This is particularly the case with openly traded commodities and services which are often prone to a high degree of volatility and wide variations of commodity prices, such as those set out in Figure 4 (Characteristics of New Zealand Trade- New Zealand merchandise exports by value), page 11 of the Issues Paper.

In the shipping market new market-based mechanisms such as derivatives have been introduced to reduce exposure, volatility and uncertainty in liner shipping market.¹

The liner shipping industry has provided no empirical evidence that price fixing liner shipping cartels are indispensable to the provision of liner shipping services. To the contrary, recent inquiries by the European Commission and the OECD have supported the case for withdrawal of competition exemptions for the liner shipping industry, most notably by the European Commission which withdrew the liner conference block exemption in 2006. The measures came into effect from 18 October 2008.

The GSF believes that the repeal of the exemption provided by the New Zealand Shipping Act 1987 would be desirable and to the benefit of New Zealand industry as cartel prices inevitably lead to higher freight rates than would be available in a normal competitive market, which would be to the detriment of New Zealand shippers and consumers. A change in the present regulatory framework would substantially enhance the competitiveness of shippers, importers and exporters, and the New Zealand economy as a consequence. These conclusions are supported by the following comments in Parts 2 and 3 of this submission.

2. Competitiveness of the International Shipping Industry and the Impacts of Collaboration

In recent years modern trade and economic policy has focused on market liberalisation and deregulation as the means by which to open up and expand international trade. This policy has led to the deregulation of many key industries including steel, insurance telecoms, gas and water, throughout the world.

The competition exemptions that still apply to liner shipping services are therefore an historic anomaly. An anomaly, however, that has serious implications for international trade, and New Zealand trade in particular, as cartelisation of shipping services impose an additional tax burden on New Zealand exports which ultimately affect the competitiveness of New Zealand products in the global economy.²

The shipping industry has provided no empirical evidence that liner shipping cartels are indispensable to the provision of liner shipping services. Further, recent reviews by the OECD³ and the European Commission⁴ have shown that cartelisation has not produced

¹ Clarksons Securities, Container Freight Derivatives: www.clarksonsecurities.com.

² European Commission letter to Competition Commission of Singapore 1 October 2010, paragraph 11, page 5 and 6, see *appendix 1*.

³ <http://www.oecd.org/dataoecd/13/46/2553902.pdf>.

reliable or stable freight rates, or that liner shipping cartels are necessary to provide reliable, efficient and competitively priced services.

There is no reason to suggest, therefore, that in a normal competitive market that efficient and competitive services would not be available, as noted by the New Zealand Productivity Commission Issues Paper at page 34 that states “recent experience suggests that the withdrawal of services by any specific carrier is quickly filled by an existing or new carrier (MOT, 2010a)”.

This supported by the fact that since the removal of the EC liner shipping block exemption the liner shipping industry has continued to perform well under the normal application of competition policy, in spite of the considerable disruption caused to international trade due the current world financial crisis and the “unprecedented drop off in trade”.⁵

Evidence that the European liner trades have performed well and to the liking of leading figures in the world shipping industry since the removal of the EC liner shipping block exemption is confirmed by Mr Eivind Kolding CEO of Maersk line who has stated:

*“I think shipping lines would be happy to see a solution like the one in Europe... The European solution seems to work well and European trades have adjusted to the new paradigm, so in general we are happy with what we see there”.*⁶

This assessment is also supported by the European Commission Competition Directorate’s assessment see *appendix 1* attached.

The above comments underline that the liner shipping industry is fully capable of operating in a competitive market free from antitrust exemptions, and the removal of antitrust exemptions will not unduly affect the provision of liner shipping services. It also confirms that the liner shipping industry has adapted well to the changes in Europe and that this is welcomed by leading shipping industry figures who would be happy for the recent changes adopted in Europe to be extended to other regulatory jurisdictions.

In regard to the impact on shippers, and New Zealand importers and exporters in particular, it is clear that liner cartel rates imposed by conferences can lead to excessive excess pricing⁷, i.e. rates that are above competitive levels. This acts as a transfer of profits from shippers to carriers and is likely to impact on demand and result in a loss of competitiveness in international commodity and product markets.

Moreover, the GSF asserts that as a general proposition, there is no benefit to shippers and consumers of stable high prices which substantially exceed the competitive level as a result of liner shipping cartel pricing.

In this regard, it is important to stress that shippers have limited bargaining power compared to shipping lines and liner conference cartels. Shipowners are small in number while shippers are numerous and varied and relatively small in size in regard to their buying power. In its impact assessment into the review of the EU liner conference block exemption, the European Commission identified that even the largest shippers in trades to and from Europe enjoyed no more than 3 per cent of the market in any given trade. This lack of bargaining power is compounded by the additional power conferred on liner shipping companies through the antitrust exemptions extended to liner shipping cartels.

⁴ The European Commission’s consultation paper, discussion paper impact assessment paper and white paper:

ec.europa.eu/competition/sectors/transport/legislation_maritime_archive.html.

⁵ The Stiglitz Report: Reforming the international monetary and financial systems in the wake of the global crisis, 2010, pXV.

⁶ Lloyd’s List, 30 September 2010, “Maersk Line expects end to antitrust concessions”.

⁷ See the EU Competition Directorate’s Impact Assessment on the repeal of EC Regulation 4056/86 via the link provided in footnote 2.

The Issues Paper rightly identifies that freight costs inhibit trade and that a 10 per cent reduction in transport costs could lead to a 1 to 2 per cent increase in trade, see pages 2 and 6 of the Issues Report. The Issues Paper also draws attention to the problems New Zealand faces as a result of its remote location and long, thin routes, resulting in less frequent services. This underlines the importance of ensuring that a highly competitive market for shipping services, devoid of cartel distortions, is established and maintained to meet the needs of New Zealand shippers.

The GSF maintains, therefore, that anti-trust exemptions enjoyed by the shipping industry result in higher rates paid by New Zealand shippers which affect the competitiveness of New Zealand commodities and products in world markets. The GSF therefore considers that the repeal of the Shipping Act 1987 Act relating to liner cartel agreements to fix shipping prices could increase New Zealand trade and expand the range of services available to shippers.

2.1 Cooperative Agreements and Consortia

In this submission the GSF draws a distinction between liner conference price fixing cartels and so-called “discussion agreements”⁸ which have the object or effect of limiting price competition with other forms of shipping cooperation agreements such as consortia, non-rate making agreements and vessels sharing agreements.

The GSF believes the latter form of agreements can provide benefits to shippers, as opposed to liner cartels, in terms of reduced costs and enhanced efficiency. Similar forms of cooperation are commonplace in manufacturing and other sectors and we see no reason why the shipping industry cannot take advantage of the general provisions of competition law dealing with cooperation agreements, including horizontal and vertical restraints.

In the GSF’s response to the APEC study on shipping non-rate making agreements, the GSF maintained that it was not necessary to provide a general blanket exemption for such agreements from the normal provisions of competition law. In other words, non-rate making and consortia type shipping agreements should be treated in exactly the same way as cooperative agreements in other sectors of the economy. If, however, non-rate making and consortia agreements were to be treated differently, via for example, some form of limited antitrust exemption, the GSF stressed in its APEC submission that such agreements should be subject to certain conditions, such as market share thresholds and other restrictions to guard against the possibility of anti-competitive abuses. This is important as capacity restricting and non-utilisation agreements have the potential to restrict or eliminate competition in regard to a substantial proportion of a given trade.

Capacity restricting agreements and cooperation agreements can potentially be as restrictive of competition as hard-core price fixing cartels.

3. International Regulatory Trends

The liner conference system is one of the sole remaining relics of the mid-nineteenth century’s economic *laissez faire* approach taken historically to shipping and many other economic sectors by governments throughout the world. This has persisted more recently through exemptions from the general application of competition rules to liner shipping cartel conferences provided by national governments.

In recent times, national governments and inter-governmental organisations have sought to reach agreement on a rules-based system for international trade, most notably through the GATS and more recently through the WTO. The prime objective of the WTO has been to liberalise global trade by removing barriers to international trade and opening up access to national and international markets, and, as a result, to open up international

⁸ Such as the Transpacific Stabilization Agreement that operates in the liner trades between the US and Asia.

markets to enhanced levels of competition. The WTO has subsequently adopted a competition policy protocol under which WTO members are required to develop competition rules as the means of regulating competition in newly liberalised global markets in goods and services.

In the world's developed economies, OECD member states agreed to a major cross-sector deregulatory initiative in 1999. The resulting OECD inquiry into the liner shipping industry stemming from this initiative was conducted in 2000-2001. This was the first serious wide-ranging international inquiry into the liner shipping industry and the impact of cooperation, in particular the impact of price fixing cartels, in recent times. The inquiry challenged head-on the so-called core industry theory that liner shipping was inherently unstable, and that liner conferences provided stable freight rates or guaranteed the provision of reliable shipping services.

The 2002 OECD report said there was no evidence that the liner shipping industry provided stable freight rates. The report also noted that other arguments advanced by shipowners to justify antitrust immunity – namely long-term capital investment in ships and assets, the cyclical nature of the industry, peaks and troughs in demand and seasonal variations in demand, and trade imbalances – were not unique to the shipping industry and were common features shared with many other industries.

The 2002 OECD report concluded: “Liner shipping should no longer be granted antitrust immunity for price fixing and freight rate discussion agreements as there is no convincing evidence that these practices offer more benefits than costs”.

The European Commission Competition Directorate review of the EU liner conference Regulation 4056/86 produced similar finding to the OECD inquiry following an extensive 2- year review, see *appendix 1* attached.

The European Commission subsequently repealed EC Regulation 4056/86 with effect from 18 October 2008. The EU abolition of cartel conferences marks a fundamental change in the international regulatory approach to liner shipping by bringing carriers within the scope of competition policy as it applies to the rest of the economy.

This has had a marked affect on the regulatory treatment of liner shipping cartel agreements, and it has tipped the balance in favour of treating international liner shipping services under the same competition regulatory framework as other sectors of the economy. The EU Competition Directorate's letter to the Competition Commission Singapore highlights the fact that 44 per cent of the world's deployed container capacity is conducted in trades to and from Europe. Importantly, this includes 2 out of the 3 world's liner trades the Europe/Asia and Transatlantic liner market. A very large proportion of international liner shipping markets and global trade is therefore conducted under a full antitrust regulatory environment.

Israel has recently followed suit with the EU and repealed its liner conference cartel exemption.

These changes mark a turning point and very much underline that antitrust exemption in the liner shipping sector is no longer the norm and is likely to spread as more countries and regions review their existing antitrust arrangements.

In 2010 the U.S. Congressman James Oberstar introduced a new bill to remove antitrust immunity in the United States. The bill fell due to the mid-term U.S. elections, but a powerful coalition of U.S. industry interests is supporting a campaign to reintroduce an antitrust bill. We understand that a new bill is likely to be reintroduced in the near future.

As stressed throughout this submission, changes in the international trading system, in particular the move towards market deregulation, require corresponding changes to competition policy to ensure effective competition for consumers and competitors, but

also to guard against market distortions, anti-competitive practices and inefficient cartel practices.

The development of competition policy, and cooperation on competition policy developments between competition authorities on a global and regional basis, is today highly advanced. The objective of aligning competition policy approaches is orchestrated by such inter-governmental groups as the Competition Policy Network of competition authorities and the OECD. And a growing number of developing groupings and countries, not yet equipped with competition rules, are fast introducing competition policy measures to address competition-distorting effects of cartels, anti-competitive behaviour, predatory pricing and unfair competition.

The GSF welcomes the opportunity to comment on the New Zealand Productivity Commission Inquiry into International Freight Transport Services. This submission is welcomed by the New Zealand Shippers' Council, as a member of the Global Shippers' Forum. The GSF has endeavoured to provide a factual and evidence-based approach in this submission to ensure that the Productivity Commission is as well-informed as possible in its evaluation of international freight services that impacts the competitiveness of New Zealand's international trade.

We therefore very much hope that the New Zealand Productivity Commission will recognise that deregulatory changes currently taking place in international trade require corresponding changes to the regulatory environment concerning international freight, in particular changes to the anti-trust exemption provisions concerning liner cartel shipping agreements. Important changes removing such exemptions have now been taken by leading governments representing a substantial proportion of international trade. The Productivity Commission's Issues Paper adroitly notes that government's can take few actions other than changes laws and the regulatory environment to promote the economic progress and efficiency, particularly in regard to the efficiency and performance of the logistics supply chain for New Zealand importers and exporters.

The GSF respectfully submits that New Zealand could take a major step forward in enhancing competitiveness and lower costs for the benefits of New Zealand industry by repealing the exemption for liner shipping conference cartels provided by the New Zealand Shipping Act 1987.

Yours faithfully

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REFERENCES

- A. Appendix 1. European Commission Directorate-General for Competition, Letter to Competition Commission of Singapore, CCS's Proposed recommendations with respect to the Competition (Block Exemption for Liner Shipping Agreements) Order 2006.

