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Shipping class exemption – public submission

We welcome the opportunity to contribute to the ACCC's further review of Part X of the *Competition and Consumer Act 2010* (Cth) (the '**CCA**') and consideration of a proposed class exemption for ocean liner shipping.

There have been significant recent changes in supply chain dynamics that have had a bearing on competitive pressures in the Australian container shipping market including, in particular, the increasing bargaining power of shipping lines.

Australia's economic prosperity depends on importers and exporters having access to efficient, effective and competitive international shipping services supported by a competitive and commercially viable national stevedoring industry.

The mechanism of automatic exemption from the CCA's restrictive trade practice prohibitions does not remain an effective way to achieve the principal objects of Part X of the CCA. The ACCC's proposal that Part X be repealed by the Commonwealth Government is supported.

It is essential that the terms of any class exemption that may be introduced both foster increased competition in the international liner cargo shipping market and support a competitive and commercially viable Australian stevedoring industry. Any class exemption should be carefully developed to deliver pro-competitive outcomes across the supply chain including by:

- limiting the scope to consortium members with a combined market share of 15% or less (applicable to both consortiums and alliance relationships at a global level);
- limiting the scope of permissible liner shipping coordination to operational matters only; and
- not enabling collective bargaining and negotiation by cargo owners with liners.

The industry context in support of these positions is fulsomely detailed in a confidential submission to the ACCC. At a high level:

15% limit on market share

The international examples of the European Union (less than 30%) and Hong Kong (less than 40%) are not directly comparable given the Australian market is unique, consisting principally of only the four capital city ports.

The top eight international shipping lines now control close to 80% of global capacity. In the Australian context, the market has trended towards an oligopoly with over 80% of the container trade distributed amongst the four major players, who each have market shares of between 17% and 25%.

A market share cap higher than 15% will not achieve the desired pro-competitive outcomes in Australia.

Applicable to operational matters only

Any class exemption should be limited to coordination by eligible shipping lines on operational matters only, being:

- pooling vessels to operate a network;
- agreeing / coordinating sailing schedules; and
- exchanging spaces / slots on vessels.

These forms of coordination may assist smaller operators to offer alternate services to those operated by the major international shipping lines, thereby promoting competition in the market. Other forms of coordination are likely to substantially lessen competition in the market and are unlikely to deliver any overall public benefits.

No collective bargaining by cargo owners

A class exemption that would enable collective bargaining and negotiation by large cargo owners with shipping lines would not promote competition in the market. In circumstances where international shipping lines already have unprecedented bargaining power (and even in the case of less significant shipping lines), there is a high risk that any benefits that may accrue to cargo owners would be off set by detriment to suppliers of shipping lines, seeking to defray any value awarded to cargo owners. This is particularly concerning in a market where suppliers of shipping lines (including, for example, tug boat operators, stevedores etc) do not have market power.

In this context, it is critical to note that the environment of low profitability for stevedores and unsustainably low rates of return on investment will continue for the foreseeable future.