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Dear Jason,

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) thank you and your colleagues for meeting with our representatives in Canberra on 17 October 2023.

As discussed, our alliance of members and peak commodity group associations continue to lead industry's call for reform to competition law in Australia in an environment where international shipping lines have significant bargaining power through consolidation and organisation into global alliances.

VESSEL SHARING ARRANGEMENTS

While Vessel Sharing Arrangements (VSAs) can bring benefits, namely economies of scale and coordination across a global network, FTA and APSA have concerns that increased concentration of the shipping industry combined with the exemptions from Australian competition law provided by *Part X* of the *Competition and Consumer Act* has the potential to lead to artificially elevated freight rates, surcharges and landside logistics costs.

Whilst APSA has negotiation rights, being the peak body as designated by the Federal Minister of Infrastructure and Transport to protect the interests of Australia's cargo owners and shippers in respect to shipping and international logistics services, these provisions have failed to give confidence to exporters, importers and freight forwarders of adequate protections from potential anti-competitive practices. Similarly, the European Commission explained its recent decision not to renew the Consortia Block Exemption Regimes (CBER) as it did not deliver efficient services, which are the basis for such protection, especially during the two years of the COVID crisis.

FTA and APSA made a formal submission on 11 February 2022 to the Productivity Commission's review of Australia's Maritime Logistics Systems including the following recommendation:

RECOMMENDATION 1 (shipping competition review) – repeal of Part X of the Competition and Consumer Act 2010, with retention of shipper collective bargaining provisions, leaving two options:

- (1) foreign owned shipping lines to operate in line with competition laws faced by other businesses involved in Australian commerce; or*
- (2) if deemed necessary for foreign owned shipping lines to have ongoing protections, expand the role of the ACCC (or introduce a federal maritime regulator) to administer processes to safeguard exporter and importer's interests, in particular, monitoring the appropriateness of shipping line (and contracted stevedore / empty container park) surcharges, fees and penalties.*

The Productivity Commission agreed with the FTA/APSA position that Part X is outdated, unnecessary and have recommended it be repealed.

In its final report, the Productivity Commission expressed the view that determining what, if any, forms of collaboration should be exempt from competition laws should be a matter for the Australian Competition and Consumer Commission (ACCC) after a transparent process, and only where they have assessed that the reduction in competition would result in significant efficiencies or public benefits. The Productivity Commission noted existing legislation provides the appropriate mechanism for this assessment through the authorisation and class exemption regimes.

COLLECTIVE BARGAINING

As also outlined in the FTA and APSA submission to the Productivity Commission, a need remains for shippers to have access to collective bargaining. While seeing merit in the Productivity Commission's recommendation to repeal *Part X*, there is a need for an ongoing role for a designated peak shippers' body to provide a review (guarantee check on power) and mandate an effective mechanism for consultation to support benefits currently available under *Part X*.

APSA understands that the Australian International Movers Association (AIMA) is the only existing shipper representative body utilising the *Part X* exemption to purchase freight from shipping lines. This has been an established practice for almost 30 years with the major beneficiary being the general public (AIMA member's clients) moving personal / house-hold effects. AIMA is of the view that removal of the *Part X* provisions would have a devastating effect on the costs of shipping household goods and personal effects overseas and the productive way AIMA members utilise container equipment under the terms of the contracts in place. It is recommended that the Competition Taskforce engage directly with AIMA in terms of mechanisms to safeguard existing commercial arrangements.

SURCHARGES

FTA and APSA have serious concerns about the implementation of surcharges without notice. By way of example, congestion surcharges were implemented by several shipping lines in September 2020. Instead of recovering costs from their contacted stevedores for failing to meet appropriate service standards, the following surcharges were implemented in quick succession as a means of recovering costs directly attributed to delays caused by industrial action at Port Botany terminals.

MSC	14 Sept 2020 USD 300 per TEU	Implemented for US cargo 8 Oct 2020
Hapag Lloyd	16 Sept 2020 USD 300 per TEU	Implemented for US cargo 16 Oct 2020
ANL CMA CGM	17 Sept 2020 USD 285 per TEU	Implemented for US cargo 10 Oct 2020
ONE USD	326 per 20' / USD 650 per 40'	
PAE / PIL	17 Sept 2020 USD 300 per TEU exports	1 Oct 2020 USD 300 per TEU exports
Maersk	1 Oct 2020 USD 350 per TEU exports	Implemented for US cargo 24 Oct 2020

Like the 2020 experience with congestion surcharges, FTA and APSA note that most shipping lines have recently deployed a range of surcharges, said to offset costs associated with the diversion of trade lanes because of the Red Sea hostilities.

The concerning aspect is that except for US trade, these have had immediate implementation, including consignments in-transit.

While surcharges provide shipping lines immediate compensation for unforeseen events, it is the shipper that must absorb the cost without an ability to offset such adjustments to contracted supply of goods.

One exporter alone advised FTA and APSA as of 4 January 2024, the early implementation of shipping line administered Red Sea surcharges had cost this regional Australian producer USD230K with no chance to recoup costs from buyers.

FTA and APSA recommend adoption of legislation, like that as used in the US, requiring shipping lines to provide at least 30 days between the publication and effective date of change to a tariff that results in increased costs to shippers.

Thank you once again for the opportunity to engage on these competition matters affecting Australian international trade. We look forward to ongoing productive discussions.



Paul Zalai

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