

30 June 2022

Commissioner Julie Abramson
Commissioner Stephen King
Productivity Commission
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CC: Susan MacLeod - Director | Competition Enforcement and Commercial Construction- Australian Competition & Consumer Commission

SUPPLEMENTARY FTA/APSA SUBMISSION (REVIEW OF AUSTRALIA'S MARITIME SYSTEM) – SHIPPING COMPETITION REVIEW

Dear Commissioners,

Further to the Freight & Trade Alliance (FTA) and Australian Peak Shippers Association (APSA) [formal submission](#) to the Review of Australia's Maritime System and supplementary submissions ([Terminal Access Charges](#), [Container Detention](#) and [Landside Congestion](#)), we present to you this additional information supporting a recommendation for a review on shipping competition regulation.

As previously advised, APSA is a member and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

As presented in the attached GSF media release, several shipping consortia arrangements involve the constituent shipping lines controlling more than 30% of capacity in the Asia to Europe market, in excess of the principle established in the EU's Consortium Block Exemption Regulation. Scheduled capacity between world regions has fallen with the GSF's analysis noting that whilst service reliability has now stabilised, the number of port calls skipped continues to grow.

A summary of the GSF's findings include:

- the current Herfindahl–Hirschman Index (HHI) measures of competitiveness in the global liner shipping market are incomplete (and therefore inaccurate), failing to take full account of the degree of co-operation between foreign owned shipping lines which results in a more highly concentrated industry, to the serious detriment of exporters and importers worldwide;
- the recent [Fact Finding Investigation 29 - Final Report](#) published by the US Federal Maritime Commission (FMC) in May this year does not yet provide a complete picture, as the report maintains the liner trades serving the USA can be characterised as exhibiting 'vigorous competition' because their HHI has been measured at below 2,500 points;
- FMC and all other competition authorities are urged to utilise the more accurate Modified HHI (MHHI) measure in its assessments of the container shipping market, and in particular of the concentration in market share achieved through all agreements permitted under block exemption and anti-trust immunity provisions;
- current measures of market concentration are only seeing part of the picture - not only are there consortia operations within the three main Alliances, the number of separate consortia that exist consisting of lines from different Alliances is also significant; and
- competition authorities should urgently revise their measures of competition to reflect the reality of the container shipping market and ensure they capture the full extent and effects of shipping line co-operation, as experienced by exporters and importers.

It is GSF's contention that a lack of, or reduction in the levels of competition, leads directly to poor service quality for shippers. This is borne out by other findings in the attached Container Shipping Market Quarterly Review for Quarter 1 2022 prepared by MDS Transmodal (MDST) in collaboration with the GSF.

The report shows number of port calls achieved (in comparison with those scheduled) fell to 68%, the lowest level recorded since this analysis began in 2020 and, though capacity lost through skipped ports in Europe declined in Q1 2022, it continued to rise in both Asia and Australia with exporters and importers consequently suffering from further delays

In line with this evidence, FTA / APSA restates its recommendation as outlined in its original submission:

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.

For your consideration



Paul Zalai

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