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Director
Productivity Commission
[illegible]

30 August 1999

Dr Neil Byron
Commissioner
Productivity Commission
Level 28, 35 Collins Street
MELBOURNE VIC 2000

Dear Dr Byron,

Review of Part X of the Trade Practices Act

It is appreciated that it is very late in the enquiry process and that the Submission by the Federal Department of the Treasury has only recently been received. We would like to make a few comments in relation to that submission and hope they can be taken into account in the Commission's final report.

The Treasury clearly states what has been the main object of this enquiry and that is to demonstrate that the Part X arrangements are both necessary and beneficial and that Part X should not be repealed. Whilst the Treasury suggests there may be benefits in making Liner Shipping subject to standard competition laws, the reasons advanced in support of that proposition do not appear to acknowledge the realities of the international Liner shipping market place as it exists today.

The Submission states that competition and improving efficiency are driving continual reductions in operating costs and freight rates and that the low level of the existing freight rates could be well be sustained in the future. The Treasury correctly point out that the legislative review process under the national competition policy is that the legislation should not restrict competition but it is clearly demonstrated in the submission that competition is not being restricted in the Australian international liner trades.

The Treasury points out that an analysis of markets shares at regional ports suggests that nonconference operators already provide the majority of liner services to regional ports.

With containerisation in the late 1960s, there was a rationalisation of port calls by both conference and nonconference operators to enable a more economic service to be provided and to help sustain the large capital costs involved. Most regional exports

are today lifted on international liner services from major ports with the cargo being fed from regional areas to those main ports. It is highly possible that there is confusion over the definition of a conference and of liner shipping. Very few international line operators call at regional ports. C&S Shipping, lift meat from North Queensland ports and Brisbane to North America and whilst they claim to be nonconference as they are not members of AUSCLA, they are members of the US Discussion Agreement which is registered under Part X of the Trade Practices Act. In fact, thirty of the approximate forty international liner operators regularly serving the Australian Trades are at least party to one or more registered agreements under Part X. As explained in the main LSS submission, many operators are conference in one trade and nonconference in another. Transhipment via Singapore, for example, could involve nonconference from Australia but the cargo could be carried a conference service from Singapore to the final destination.

It is also important to draw a distinction between chartered and liner shipping. Liner shipping involves a multitude of shippers and a multitude of cargos and therefore, if one shipper such as Pasminco charters a ship, it is not a liner service. In fact Pasminco only last year; switched their liner services from Risdon and Port Pirie for their shipments of metals and minerals to charter shipping for all markets.

Another misconception in the submission is that nonconference shipping has grown over the last two decades. This would have been a relevant comment in 1993 but the share of the traditional definition of conference, i.e. the compulsory setting of common prices, has remained around the 55% level over the last five years. What has grown are Discussion Agreements which are classified as conferences under Part X and if they are counted as conferences, total coverage would be approximately 70% of the international liner trade today. Equally the worldwide alliances which seem to be favoured by the Treasury, are classified as conferences under Part X.

It is stated that nonconference operators already provide the majority of services for refrigerated cargos for regional ports and the market is still growing. This possibly involves and includes the C&S shipments which, as noted above, are part of an agreement registered under Part X, but nowhere does the Treasury state what proportion of Australia's refrigerated exports are carried by conference and nonconference from regional ports. In other words refrigerated exports lifted directly from regional ports would be only a small proportion of Australia's total of refrigerated liner exports.

Contrary to the assertions made in this submission there is no worldwide move away from granting exemptions from competition laws. No country subjects international liner shipping to the full thrust of its antitrust laws and the compatibility between the regimes does not arise from the different application of the regulations but it does arise from the fact that at least the necessary exemptions are provided from national competition laws. The submission notes that all OECD member countries grant some form of immunity for exemption from national competition laws for conference activity. Reference is made to a secretariat paper which, to our knowledge, has not

yet been considered by any official OECD committee, that suggests consideration should be given to reviewing these arrangements. Official OECD policy, as set out in main LSS submission, is to seek some compatibility between the application of national competition laws and the necessary exemptions for the facilitation of the world's international liner trade through the bus-like services provided by these unincorporated joint ventures, commonly referred to as conferences.

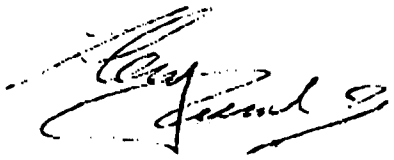
Reference is made to revenue and cost pooling and discussion agreements and shipowner accords. These issues are well covered in the main LSS submission but Treasury seem to be under the impression that all conferences outside of discussion agreements have an obligation to pool revenue. A number of conferences do not have any revenue pooling systems. It is also worth noting that shipowner accords in the Australian trades have not existed since the early 1980s.

Treasury spend some time in comparing international liner shipping with the international aviation industry. It is Australian government policy to move to an open skies situation particularly bilaterally, where this can be achieved. However at the present time there are significant restrictions in existing government to government air service agreements. This allows the international aviation industry to control its capacity and an analogy in respect of international liner shipping would be bilateral maritime agreements which would be more anticompetitive than the present market which encourages competition. It was acknowledged by representatives of the Department of Transport and Regional Services in the industry consultations in preparation for the WTO Agreement on Trade and Services in the millennium round, that there was unlikely to be enough support for the liberalisation of traffic rights but one of the major factors under debate would be the ownership and control of international airlines. It is possible that over the next ten years or so there could be increased liberalisation of international air services and when that process is fully completed, international airlines could also be seeking limited exemptions to national competition laws similar to Part X of the Australian Trade Practices Act.

Treasury notes that the broad concept of public benefit, under which authorisation may be granted, allows the ACCC to make a considered judgement on the basis of a range of factors. These factors are not outlined and there is no acknowledgement of the relationship between the public interest and those of Australia's liner exporters who for the most part support retention of Part X. To overcome the identified problems in the authorisation process, the Treasury suggests the application of an industry code which might offer a means of minimising regulatory costs to the industry. Such a code is similar to what happens now under the existing Part X provisions and it is not clear what benefit would be gained from developing an alternative regime. It is interesting to note that in 1980 the then Mr Justice Deane (now Australia's Governor General) stated in a judgement that in his view Part X (admittedly prior to the 1989 amendments) comprised a comprehensive code dealing with outward cargo shipping Refer Refrigerated Express Lines A/asia Pty Ltd v. Australian Meat and Livestock corporation (1980) 44 FLR 455.

It is disappointing the Treasury submission was not available prior to the public hearings as debate on many of the issues raised above could well have been productive in refining the arguments and more clearly differentiating the views of the various parties to this enquiry.

Yours sincerely,



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