



Representing the container shipping sector in New Zealand

SUBMISSION TO THE JOINT STUDY BY THE AUSTRALIAN AND NEW ZEALAND PRODUCTIVITY COMMISSIONS ON STRENGTHENING TRANS-TASMAN ECONOMIC RELATIONS

1. The International Container Lines Committee (“**ICLC**”) appreciates the opportunity to make a submission on the Discussion Draft issued jointly by the two Commissions in September 2012 (“**Draft**”).
2. The ICLC is an unincorporated working committee within the industry body Shipping New Zealand/New Zealand Association of Ship Agents. ICLC members comprise all the international container shipping lines presently active in providing sea freight services into and out of New Zealand:

ANL	Mitsui OSK Line
China Navigation Company	Neptune Shipping
CMA CGM	NYK
COSCO	OOCL
Hamburg Sud	Pacific Direct Line
Hapag Lloyd	Pacific Forum Line
Maersk Line	PIL
Marfret	Reef Shipping
Mediterranean Shipping Company	Sofrana
3. The ICLC exists to liaise with and assist Government stakeholders, regulators, consumers and other industry groups (including New Zealand ports, importers and exporters) on the operational requirements and policy developments affecting the international container shipping sector. While the ICLC represents the interests of shipping lines, it is also uniquely well-positioned to comment on the impact and perception that New Zealand policy developments will find internationally, through ICLC member’s head offices, international networks and port, governmental connections, or international trading links.
4. The ICLC supports the general nature of the joint study that the two Commissions have been tasked with. Increasing economic integration or harmonisation between the countries, and thereby increasing trade flows, is an important ongoing process. Shipping companies who are at the ‘coalface’ of trading relationships and international connectivity generally support and welcome such measures.
5. It is very important, as the Commissions recognise, that the wider picture of the Asia-Pacific region is kept in mind at all times. The potential economic gains from increased trade flows with vigorous Asian economies are far greater than the incremental gains from refinements to an already mature and successful trans-Tasman market. Any developments that would set New Zealand and Australia on a diverging path to our Asian neighbours should, therefore, be viewed very cautiously and based on informed analysis.
6. While supportive of aspects of the Commission’s draft report, the ICLC would like to comment specifically on the proposed initiative at DR 4.11.
7. DR 4.11 repeats an earlier call by the same advisors to abandon the exemption for international liner shipping from general competition laws. The Australian government rejected that call in 2006; the New Zealand government is currently considering it. DR 4.11 appears to draw all its analysis from the New Zealand Productivity Commission’s *Report into International Freight Transport Services* dated April 2012 (“**NZPC Report**”).
8. With all due respect, the ICLC takes issue with such calls to abandon existing policy, and with the NZPC Report, because they ignore some vital empirical points that would ordinarily be expected to be part of any sound policy reform advice:

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- No evidence of market failure or problem with the current regulatory regime has been identified; the calls are based largely on theory or ideology.
 - Existing sector-specific regulatory regimes in Australia and New Zealand are well understood and workable within the industry's particular needs (those regimes serve as a compromise to both demand and supply-side interests).
 - The fact there have been few investigations by the ACCC under Part X, or by the New Zealand Minister under the Shipping Act, indicates there have been few problems with the current regime.
 - The ongoing threat of such investigations and regulatory intervention is widely recognised as a powerful constraint on potential abuse of the exemptions.
 - Most Asia-Pacific region nations retain an exemption – it is misleading to describe New Zealand as an “outlier”, as current legislation and governance of the shipping industry is reasonably common across all major markets in the region.
 - If anything, it is the EU that has taken a unique approach, which other nations (including the US) have viewed with some concern – and certainly have not rushed to adopt. And even there, the EU retains a partial exemption.
 - Having failed to identify any current ‘problem’, the NZPC Report then failed to properly analyse the available options to remedy the imagined ‘problem’. No rigorous cost-benefit analysis, or investigation of the trade risks, was conducted.
 - The two Commissions now admit that any benefits in removing the exemption are “unlikely to be large”. The NZPC Report in fact struggled to articulate any clear benefit. Instead, it considered that reform might be “an insurance policy” against future potential bad behaviour. That is not a sound basis for major policy reform. It also ignores the fact that existing sector-specific regulatory controls can be called upon, if evidence of future bad behaviour ever arises.
 - New Zealand especially and also, to some extent, Australia, are small players in international trade channels. They are not self-sufficient in shipping services and have no comparative advantage in such services. Shipping arrangements are typically multi-lateral, and negotiated outside this region on a regional or global scale. The risks of reduced service to small, distant markets (that are already costly to serve) from policy experimentation are considerable. That is not a dramatic statement; just a simple fact given low international shipping profitability levels, assets that are highly mobile and can be re-deployed, and business uncertainty when faced with costly, loss-making routes or jurisdictions with difficult regulatory environments.
9. There appear to be two other contradictions in what the two Commissions are now proposing. First, such radical reforms would take New Zealand and Australia notably out of step with the regulatory regimes of our Asian region trading partners. Japan and Singapore recently reviewed the status of their exemption, and explicitly decided to keep it in place. China, Korea, the US and Canada, as well as a host of other APEC countries, retain the exemption (please see the **attached** brief summary for the APEC region). Leading the region in new regulation hitherto applied only by the EU (and, we understand, Israel) is inconsistent with the desire to integrate Australia and New Zealand more closely with Asia, where an increasing proportion of our economic interests lie.
10. More concerning still is the reliance on the NZPC Report's recommendation as a platform to advance trans-Tasman integration and harmonisation. That NZPC recommendation was to move deliberately away from closer harmonisation of business law with Australia, at least as it affects shipping.

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“Submitters were concerned that removing the exemption would discourage carriers from servicing New Zealand and make New Zealand a more onerous country to deal with. In addition to Australia, the analysis of overseas jurisdictions indicates that a number of Pacific Rim countries retain exemptions and these are important trade-hubs for New Zealand’s imports and exports. Even in the EU, non-ratemaking agreements continue to have the benefit of a block exemption.” (NZPC Final Report p 234)

...

“In the Commission’s view, the concerns expressed by submitters about New Zealand moving too far ahead of its major trading partners, especially Australia, are unlikely to be justified if the exemption removal is limited to ratemaking agreements.

Coordination between New Zealand and Australia in relation to the proposed change would be desirable (and may reduce the potential costs of removing the exemptions for each party), but the Commission does not judge it to be essential.” (NZPC Final Report, p237, NZPC Draft Report, p191)

11. To expand on why this reliance on the NZPC Report is problematic:
 - Australia and New Zealand both currently do have international shipping exemptions to that extent, the systems are currently harmonised (although Australia does have a formal filing/registration process in Part X of the Competition & Consumer Act 2010).
 - The ICLC and other submitters suggested to the NZPC that a move towards a similar Part X process would be workable and would enhance harmonisation (even though no problem or ‘mischief’ requiring change had been identified by the NZPC Report).
 - The NZPC Report rejected that, stating it was untroubled by the risks to New Zealand moving its policy out of alignment with Australia.
 - Therefore the recommendation that New Zealand unilaterally revoke the exemption creates disharmony, not greater trans-Tasman integration.
 - We understand the Australian government considered this issue and decided in favour of retaining Part X in 2006. No new problem or change in market circumstances has come to light since then that would justify change.
12. To now suggest that Australia should follow suit down an uncertain policy reform path, in order to ‘address’ the disharmony created by the NZPC suggestion, is mis-guided. At best, it risks the two nations becoming isolated from the rest of the Asia-Pacific region on shipping policy issues. At worst, it does not meet the critical test of advancing trans-Tasman integration, and arguably is outside the Ministerial Terms of Reference that were set for this Joint Scoping Study (not least, in failing to analyse the “significant transition and adjustment costs that could be incurred”).
13. Recognising that New Zealand and Australia’s interests lie increasingly with the new markets of the Asia-Pacific region, together with other traditional key trade lanes (where exemptions from general competition laws remain firmly in place), the interests of local companies involved on the Trans-Tasman trade will hardly be promoted by unilaterally abandoning the current exemption for liner shipping from generic competition laws. It is the firm opinion of the ICLC that there are greater opportunities to strengthen Trans-Tasman economic relations with the current structures and provisions still in place.

Date: 18 October 2012

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APPENDIX 1 –SUMMARY OF APEC REGION NATIONS STANCE ON SHIPPING EXEMPTIONS

Country	Status/details of liner shipping exemptions
United States	Exemptions in effect. No imminent change proposed.
Canada	Exemptions in effect. No imminent change proposed.
Australia	Exemptions in effect. In 2004/5, the Australian Productivity Commission recommended that exemptions be removed. The Australian Government considered that recommendation and rejected it in 2006.
Japan	Exemptions in effect. After detailed review, Government decided to retain full exemption in June 2011, with further periodic review planned in five years.
Singapore	Exemptions in effect. After detailed review by independent consultants and Government, full exemption renewed and extended through December 2015.
People's Republic of China	PRC Maritime Regulations authorise all carrier agreements. Government continuing to study the industry and the exemption issue.
Malaysia	Exemptions in effect. Broad interim exemption from competition law provided in January 2012. Government review pending on permanent exemption.
South Korea	Exemptions in effect. No imminent change proposed.
Chinese Taipei (Taiwan)	Exemptions in effect. No imminent change proposed.
Chile	Exemptions in effect. Government may consider whether to keep carrier exemption but no formal action taken to date.
Hong Kong	New competition law adopted in June 2012 and likely will not come into effect until 2014. Dialogue underway regarding exemption.
Philippines	Broad statutory exemption included in most recent consolidated Senate competition law bill. Further legislative developments pending.

Note 1: While no express competition law exemption exists in the following APEC member nations they are each a member of UNCTAD Liner Code, which is an international treaty that recognises and authorises carrier agreements: Indonesia, Vietnam, Mexico, Peru.

Note 2: Up to date information is not presently available for the following APEC members: Brunei Darussalam, Papua New Guinea, Thailand and Russia.