

# Peak shippers welcome competition reform

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Ships are getting bigger, the shipping line market is contracting and alliances are dominating.

The question for Australia’s shippers (exporters and importers) is whether this translates to better services, more competitive pricing and regular access to markets.

The question for our regulators is how much deviation from standard competition law should shipping lines be allowed to facilitate the dominance of alliances?

The experience in the European Union has been detrimental to shippers with trade bodies recently aggressively arguing against another four year extension of the liberal Consortia Block Exemption Regulation largely exempting lines of regular competition laws.

In contrast, our New Zealand neighbours seem to have got it right.

While accepting the need for shipping line consortia arrangements, the New Zealand competition authorities have introduced

Freight & Trade Alliance (FTA) is a peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian border related security, compliance and logistics activities. FTA represents 375 businesses including Australia’s largest logistics service providers and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA).

APSA is the peak body for Australia’s containerised exporters and importers designated by the Federal Minister of Infrastructure and Transport under Part X of the Competition and Consumer Act 2010. APSA represents many of Australia’s largest shippers and provide advocacy support to major industry associations:

new statutory provisions adding rigour to their block exemption regime requiring evidence of benefits to shippers.

So how is Australia dealing with this?

Part X of the *Consumer & Competition Act 2010* has evolved since first introduced in the Trade Practices Act 1974 providing broad exemptions from competition law for registered shipping lines to coordinate with each other in transporting cargo to, or from, Australia.

Shipping line market consolidation plus the emergence of stevedore-imposed Infrastructure Surcharges has resulted in supply chain costs rapidly increasing, exposing significant deficiencies in the effectiveness of Part X in being able to achieve basic shipper protections.

The Australian Competition and Consumer Commission (ACCC) has recognised a need for reform with the 3 December 2020 release of a discussion paper titled *Proposed Class Exemption for Ocean Liner Shipping*.

Freight & Trade Alliance (FTA) and the Australian Peak Shippers Association (APSA) have prepared a formal joint submission recommending:

- repeal of Part X,
- a replacement block exemption regime with terms to be drawn as narrowly as possible to permit the desired activities to be operationalised,
- retain positive features of Part X into a block exemption regime including prescribed minimum levels of service,

- exclusion in a block exemption to fix price or surcharges,
- mandate incorporation of stevedore fees within shipping line contracts (negating stevedore-imposed Infrastructure Surcharges administered on the transport sector),
- introduce a registration process administered by the ACCC,
- continuation of APSA as a designated peak industry body to support registration approval,
- alignment with the New Zealand block exemption regime to form a regional approach, and
- practical legal instruments to allow shippers to negotiate collective freight contracts with shipping lines.

Importantly the submission endorsed the ACCC as being the appropriate entity to oversee shipping competition reform recognising its track record of strong compliance enforcement, noting last year’s criminal cartel prosecution against a major shipping line for price fixing in relation to an unregistered agreement, resulting in an order by the Federal Court to pay a fine of \$34.5 million

We commend the ACCC for commencing this necessary reform and we look forward to ongoing engagement to support our shippers compete in international markets, supported by appropriate, modernised regulation.

The FTA / APSA submission is available at [www.FTAlliance.com.au](http://www.FTAlliance.com.au)

