

**Submissions of the International Container Lines Committee of
New Zealand**

in relation to the

CARTEL CRIMINALISATION DISCUSSION DOCUMENT

RELEASED JANUARY 2010

The International Container Lines Committee (“ICLC”), submits the following in response to the Discussion Paper on Cartel Criminalisation issued by the Ministry of Economic Development in January 2010:

The ICLC appreciates the opportunity to be able to comment and is ready to discuss the matter further as may be required.

1. THE ICLC

- 1.1. The ICLC is a body that exists to represent the views of the international container lines operating services into and out of New Zealand to Government, ports, service providers, importers and exporters, and other stakeholders.
- 1.2. It has no involvement in lines’ commercial matters, nor does it represent any operational grouping of any lines.

2. OUTLINE

- 2.1. The ICLC makes submissions on two issues:
 - a. The present legislation governing shipping companies (in particular, Part 2 of the Commerce Act 1986).
 - b. The significance of consortia to the shipping industry.
- 2.2. The ICLC believes that these are important issues for the shipping industry, and are therefore of importance to New Zealand's international trade.
- 2.3. Further detailed discussion with the Ministry would be welcomed.

31.03.2010

3. THE PRESENT LEGISLATION.

- 3.1. The shipping market in New Zealand is currently both highly competitive and reasonably stable. Given the importance of shipping to New Zealand's import and export economies, the legal framework governing shipping should not be altered without adequate investigation.
- 3.2. The container shipping market is, in economic terms, almost a perfect market. By this ICLC means that prices change very quickly in response to alterations in the balance of supply and demand changes.
- 3.3. In theory such markets benefit supplier and customer alike, but in practice they also bring the risk of considerable uncertainty. Such uncertainty is not always to be welcomed in international trade, where the continuity of supply of logistics services is increasingly a pre-requisite for trade to be carried on, in an efficient and sustainable manner.
- 3.4. The ICLC submits that, under certain circumstances, some moderation of the full effect of market forces is warranted. This is particularly true in a market such as New Zealand where supply lines are more attenuated, and therefore arguably more fragile than almost anywhere else.
- 3.5. Administrations elsewhere in the world, such as the United States of America, Japan and Australia, continue to take this view in the interests of international trade.
- 3.6. The ICLC, for these reasons, submits that consideration be given to an analysis of the various models that exist in other parts of the world to regulate the commercial activities of container lines before any change is made.
- 3.7. In particular it submits that the Australian competition legislation in this area (specifically Section 10 of the Trade Practices Act, 1974) should be examined to assess its applicability to the New Zealand market. The application of some of the

Australian legislative principles could entail greater transparency than exists now. It would also have the considerable benefit of bringing consistency between the two markets, both depending as they both do to a very considerable extent upon the existence of sustainable shipping services, and being themselves linked by considerable volumes of sea borne trade.

- 3.8. It is submitted that policy makers must, for much wider reasons than pure transport matters, balance the countervailing influences that are at play in this issue and must understand the need for shipping lines to be able to operate in a sustainable manner if international trade is to succeed, over the distances involved for Australasian importers and exporters.

4. THE SIGNIFICANCE OF CONSORTIA IN THE SHIPPING INDUSTRY

- 4.1. The ICLC notes that the economic uncertainties of the past 18 months have had a considerable impact upon container shipping companies. The resultant changes in their deployments in New Zealand have created uncertainties for the exporting and importing communities.
- 4.2. New Zealand's distance from its key markets and the seasonal nature of much of its export trade (which generates considerable directional imbalances) make it a difficult and relatively costly market for lines to service.
- 4.3. The nature of primary production, in particular the number of outside influences that can materially affect production volumes, make it difficult to accurately anticipate production volumes, and hence demand for container space. Consortia, alliances, slot-charter agreements and similar arrangements are a cost-effective way for carriers to increase the flexibility of supply, and therefore of considerable benefit to shippers.
- 4.4. Under such circumstances, the ability of container lines to cooperate with one another operationally, as distinct from commercially, has been of great value in ensuring the continuity of service required by the country's international trade sector.

- 4.5. Such operational cooperation between lines has ensured the maintenance of services by more operators than would otherwise have been the case, albeit with some services being common, thereby ensuring the maintenance of effective competition. Cooperation in this manner generates economies of scale which improves lines' ability to price competitively.
- 4.6. Service providers to lines, particularly the terminals, also benefit from such scale as the fewer, larger vessels employed are easier and more efficiently handled than a multiplicity of smaller vessels.
- 4.7. Against this background, the ICLC submits that a thorough evaluation of the benefits to the export and import trade that accrue from such joint operating practices by lines must be undertaken before legislative or other changes that might restrict such practices are made.

5. CONCLUSION

- 5.1 The ICLC submits that the implications for shipping involve wider considerations than may immediately be apparent, and would therefore recommend a more detailed consultation with the Ministry of Economic Development around both the operational and commercial imperatives in the current container shipping market.
- 5.2 The ICLC is ready to provide further detailed submissions if so required by the Ministry.