

Unclassified

DAF/COMP/WP2/WD(2015)6

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

04-Jun-2015

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 2 on Competition and Regulation

COMPETITION ISSUES IN LINER SHIPPING

-- New Zealand --

19 June 2015

This document reproduces a written contribution from New Zealand submitted for Item IV of the 59th meeting of the Working Party No. 2 on Competition and Regulation on 19 June 2015.

More documents related to this discussion can be found at: <http://www.oecd.org/daf/competition/competition-issues-in-liner-shipping.htm>

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [E-mail: cristiana.vitale@oecd.org].

JT03377828

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/WP2/WD(2015)6
Unclassified

English - Or. English

-- New Zealand --

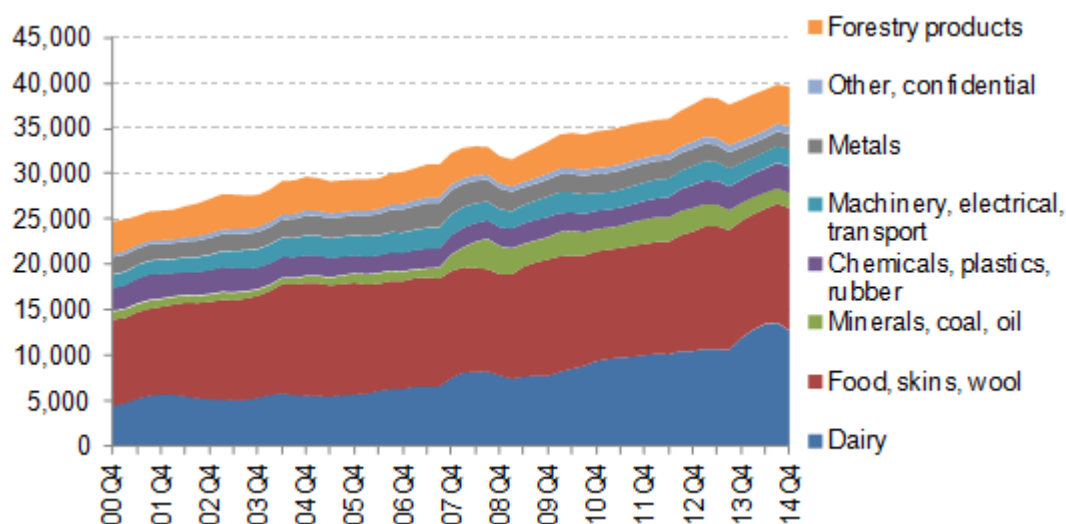
1. Liner Shipping in New Zealand - New Zealand is totally reliant on international shipping

1. New Zealand is located in the south-western Pacific Ocean and consists of two main islands. It is geographically remote from its trading partners, with the exception of Australia. New Zealand is the furthest from its trading partners than any other OECD country.

2. Over 99 percent of New Zealand’s imports and exports by volume are transported by sea.

3. For the 12 months to December 2014, 37.7 million tonnes valued at \$NZ39.5 billion were exported from New Zealand by sea. By volume, 68.9 percent was bulk exports, and 31.1 percent was containerised. In value terms, 80.2 percent was containerised and 19.8 percent was bulk export. The composition of New Zealand’s exports by value is show in **Figure 1**.

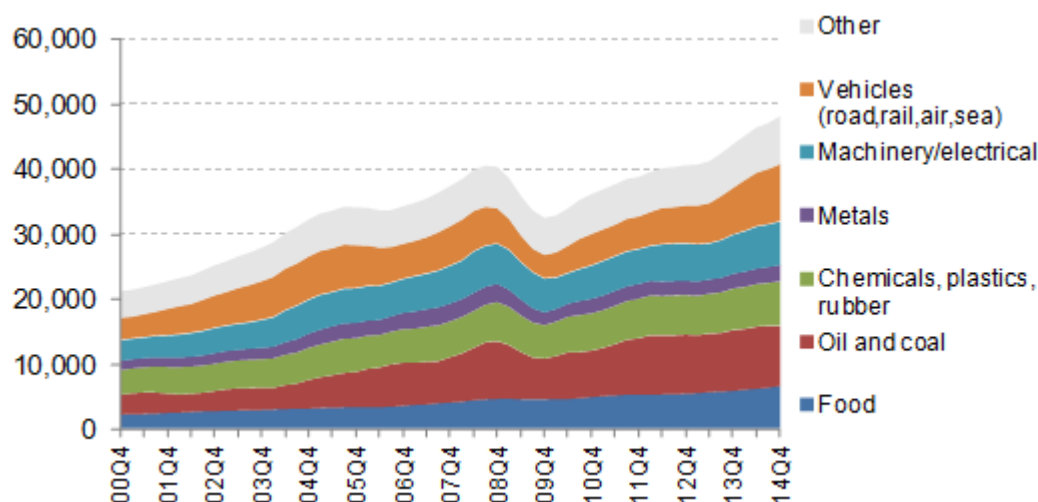
Figure 1. Real sea export value (\$NZ m) rolling 12 month totals



4. **Figure 1** shows that the vast majority of exports by value are dairy, foodstuffs, skins and wool. While forestry products are 10.9 percent of value, this primarily consists of unprocessed logs making up over half of exports by volume.

5. For the same 12 months to December 2014, 21.3 million tonnes valued at \$NZ48.2 billion were imported by sea. The composition of New Zealand’s imports by value is shown in **Figure 2**.

Figure 2. Real sea import value (\$NZ m) rolling 12 month totals



2. Special features of New Zealand's trade

6. New Zealand's geography and the product composition of its trade have some special features that impact on shipping to and from New Zealand.

- The total volume of cargo is small on a world scale – for example, the annual import and export volume of container cargo is approximately 1.93 million TEU¹, which is less than the annual throughput of just one of Hong Kong's container terminals.
- Fragmented origins and destinations – New Zealand trade volumes are fragmented over all global origins and destinations. The largest export markets are China and Australia, followed by North Asia, South-East Asia and North America. The overwhelming trend in exports has been growth in the Chinese market.
- The high proportion of refrigerated cargo and specialist on-board equipment requirements – reflecting the high level of primary produce in exports, about 22 percent of New Zealand's export cargo volume is transported by refrigerated containers. This proportion is comparatively high internationally. Refrigerated containers are heavier than normal and require specialist equipment on board the vessel. Much of the non-refrigerated primary produce for export also requires a high standard of equipment preparation on board.
- Seasonality – much of the primary produce for export is seasonal in nature. This brings significant peak demands for shipping during the year. Further much of this peak volume is harvested rather than taken from storage, making timeliness of handling and shipping critical. This peak generally occurs in the Northern Hemisphere's off-season, so ships are generally available.
- Exports significantly outweigh imports – New Zealand is primarily an export market by volume, supplemented by a smaller but strong consumer import market. There is a major imbalance of cargo type flows, particularly for refrigerated containers. This results in a substantial number of empty container movements into and around New Zealand.

¹ Twenty foot equivalent unit / 20 ft. container

- Multiple domestic ports – Over half of imports by value move through the Ports of Auckland, servicing New Zealand’s largest city. However, many New Zealand exporters have production sites throughout the country, serviced by multiple regional ports [refer **annex one**].

7. These features create significant logistical challenges for international liner carriers and New Zealand shippers.

8. Ordinarily the long distances to our major trading partners would promote the use of larger vessels to achieve economies of scale. The nearest Chinese port is over 5000 nautical miles away (about 22 days on a typical commercial container shipping service). However, New Zealand’s relatively small total cargo volume, the need for specialist on-board equipment and flexibility in scheduling and capacity, and multiple domestic port destinations with capacity constraints, acts as a countervailing influence on vessel size.

9. These challenges indicate the importance of cooperation and competition in the provision of liner shipping services.

3. Performance of New Zealand liner shipping markets

3.1 Description

10. New Zealand is relatively well served by liner shipping operators; with 18 international container line shipping companies operating in New Zealand, including nine of the 16 largest shipping companies. In general, these shipping companies operate regular services to and from New Zealand, visiting up to 10 ports. These services are generally on a fixed day, weekly basis between ports in New Zealand and our main trading partners, or via hub ports.

11. The International Container Lines Committee advises that there are currently 25 to 30 agreements that relate to sea freight services to and from New Zealand.

12. The majority of these are non-rate making agreements, such as vessel sharing agreements (space, slot charters, swaps), equipment interchange agreements, and cooperative working arrangements.

13. There are also three discussion agreements currently operating for trade to and from ports in New Zealand and ports in North East, South East Asia, Australia and the United States. These deal with advised rates and capacity management for a specific route.

14. The International Container Lines Committee advises that conference agreements, which set rates and manage capacity on a specific trade route, are no longer in operation.

3.2 Trends

15. The liner shipping market in New Zealand is continuing to evolve. Recent developments are:

- Sea export volumes are growing strongly. Most export value growth has been in food and dairy. Most export volume growth is in the trade to China.
- Ships are getting larger. The size of container ships visiting New Zealand is increasing from a median size of 1900 TEU at the start of 2009 to 2750 now. As well, in 2012 three percent of New Zealand’s containerised exports and imports were carried on ships of 4000 TEU or greater. Now over 40 percent are carried on ships of that size.

- Prices have been falling. We have limited information on freight costs. A New Zealand Productivity Commission Inquiry in 2012 analysed import freight rates and generally found that they have declined on an ad valorem basis since 1989. They cited cost-reducing efficiency and technology improvements as being reasons for the decreases. The Inquiry also found that ad valorem sea freight costs were around 21 percent higher in New Zealand than Australia, which may in part be attributable to the special features of New Zealand trade. More recently, as shipping costs are traditionally quoted in United States dollars, the strong New Zealand dollar and falls in oil prices have also contributed to lower freight costs.
- Relatively dynamic market with exit and entry of capacity and participants. With general worldwide surplus capacity in shipping, there has generally been new entry where other liner shipping carriers have exited.
- Liner shipping is tending to concentrate on fewer ports in New Zealand (Auckland, Tauranga, Napier, Lyttleton and Otago at the expense of the other five container ports). This trend will be further accentuated by the agreement between the Port of Tauranga, PrimePort (Timaru) and Kotahi Logistics (see detail below) to channel more cargo through the Port of Tauranga.

3.3 *Kotahi Logistics and Maersk Line agreement*

16. Traditionally the liner shipping market has been characterised by short term contracts, but a recent development has been a long term contract for liner shipping services between Kotahi Logistics, the Port of Tauranga and Maersk Line.

17. Kotahi Logistics is a joint venture between Fonterra Cooperative Dairy Company and Silver Fern Farms, being a major dairy and meat exporter respectively. Kotahi Logistics currently provides freight management services for more than 30 customers from sectors including meat export, wool, dairy, timber, pharmaceuticals, horticulture and seafood.

18. The 10 year agreement with Maersk Line, signed in June 2014, provides certainty as to domestic port calls and capacity to enable the investments necessary for the introduction of 6500 TEU vessels to service the New Zealand and South-East Asia route.

19. The Port of Tauranga has taken a commercial interest in PrimePort in the South Island as a means to widen its hinterland.

4. Regulation of Liner Shipping in New Zealand

4.1 Specific regulation – Shipping Act 1987

20. International shipping is exempt from New Zealand's competition law, the Commerce Act 1986. Alternative sector specific competition regulation is provided in the Shipping Act 1987.

21. Despite all international shipping to and from New Zealand being exempt from the Commerce Act, the Shipping Act provisions only apply to outward shipping. Thus New Zealand importers are provided no protection from anticompetitive practices.

22. The Shipping Act sets out a regime whereby the New Zealand Minister of Transport may initiate an investigation into unfair practices. The regime sets a high threshold to initiate an investigation and contains only limited powers for the Minister to remedy any problem. For example, there is no ability to impose penalties or conditions.

23. The New Zealand Ministry of Transport is charged with carrying out investigations to support the Minister of Transport's decision-making. However, the Ministry has no standing capacity or procedure to investigate complaints and no information-gathering powers. Since the regime was introduced, no investigations have been undertaken.

4.2 Transition to generic competition law

24. The New Zealand Government currently has amending legislation proceeding through Parliament that will reform the law relating to competition regulation of international shipping.

25. The Commerce (Cartels and Other Matters) Amendment Bill will repeal the competition regulation in the Shipping Act and the exemption from the Commerce Act. The effect of this Bill will be to transition international shipping to the generic competition law regime and the oversight of the New Zealand Commerce Commission. This transition is to occur after two years from the Bill coming into force.

26. It is expected that the Commerce (Cartels and Other Matters) Amendment Bill will come into force this year.

4.3 Rationale for regulatory change

27. This regulatory change was not precipitated by evidence of anticompetitive conduct in liner shipping. Rather it arose out of a general interest in promoting efficiency in international freight transport services. It also takes advantage of generic reforms of the cartel regime in the Commerce Act 1986 which better allow for pro-competitive collaborations.

4.3.1 Increasing productivity in international freight transport services

28. In March 2011, the New Zealand Government asked the New Zealand Productivity Commission to undertake an inquiry into international freight transport services. The context for the inquiry was that increasing international trade is a critical part of achieving productivity growth for New Zealand. Given that freight transport costs currently represent a sizeable proportion of international trading costs for New Zealand firms, it is important to ensure that New Zealand's infrastructure and regulatory regimes are effective in promoting accessibility and efficiency in international freight transport services.

29. Submissions from stakeholders during the course of this inquiry generally outlined some unease about the high level of information exchange between liner shippers. The lack of transparency relating to price and capacity movements and the ineffective regime under the Shipping Act were also identified as concerns. Other submitters, such as the International Container Lines Committee, considered that the sea freight markets were competitive. They pointed to low barriers to entry and exit in the markets, a decline in ocean freight-rates over time, and some countervailing bargaining power by large shippers (such as Kotahi Logistics and Carter Holt Harvey).

30. In April 2012, the New Zealand Productivity Commission presented its final report to referring Ministers. It recommended narrowing the international sea freight exemption in the Commerce Act and requiring non-rate making agreements to be registered.

4.3.2 *Generic reforms of cartel regime*

31. Over a similar period, the New Zealand Government was also reviewing the cartel regime in the Commerce Act 1986.

32. The Commerce Act 1986 prohibits agreements that have the purpose, effect or likely effect of substantially lessening competition. Agreements between existing or likely competitors that have the purpose, effect or likely effect of fixing, controlling or maintaining prices are deemed to substantially lessen competition. Exceptions to this deeming provision are specified, including one for certain joint ventures that have specified structural features.

33. Concerns had arisen that there was uncertainty as to the scope of the prohibition (such as in relation to agreements containing output restrictions) and that some pro-competitive collaborations that did not meet the specified structural features of the joint venture exemption may not be permitted.

34. The outcome of the review was the introduction of the Commerce (Cartels and Other Matters) Amendment Bill. This Bill redefines the prohibition against cartels. It retargets the prohibition to clarify that price fixing, output restrictions and market allocation are cartel provisions. The joint venture exemption was also redefined to relate to collaborative activities. Collaborative activities are activities carried out in co-operation and not for the dominant purpose of lessening competition between the parties. Any cartel provisions that are reasonably necessary for the purpose of a collaborative activity would not *per se* unlawful.

35. A new clearance regime is also to be introduced to enable parties proposing to engage in a collaborative activity to voluntarily apply to the Commerce Commission for its assessment of whether the arrangement is likely to be lawful. This regime will promote certainty and provide guidance to the wider business community on the operation of the provisions.

36. These reforms provided an opportunity to reassess the need for the international liner shipping exemption in the Commerce Act, informed by the outcomes of the Productivity Commission Inquiry. It was considered that the new cartel regime would be able to allow for pro-competitive co-ordination in liner shipping markets with minimal compliance costs to liner shippers. It would also strengthen protections for New Zealand importers and exporters from anticompetitive conduct. Consequently, rather than narrowing the international liner shipping exemption, the New Zealand Government agreed to its repeal.

4.3.3 *Way forward*

37. Once the Bill is passed, the international liner shipping markets will have a two year transition before the Commerce Act 1986 applies. In this time, the New Zealand Commerce Commission may develop specific guidance for the sector on the application of the Act.

38. New Zealand welcomes the opportunity to learn from the experiences of other jurisdictions with oversight of international liner shipping.

REFERENCES

New Zealand Commerce Commission (March 2012) Fonterra Co-operative Group and Kotahi Logistics Authorisation.

<http://www.comcom.govt.nz/business-competition/anti-competitive-practices/anti-competitive-practices-authorisations-register/fonterra-co-operative-group-restrictive-trade-practice-application/>

New Zealand Ministry of Transport (March 2015) Freight Information Gathering System and Container Handling Statistics January – December 2014.

<http://www.transport.govt.nz/sea/figs/>

New Zealand Productivity Commission (April 2012) International Freight Transport Services Inquiry.

<http://www.productivity.govt.nz/inquiry-content/1508?stage=4>

ANNEX ONE --NEW ZEALAND PORTS LOCATION

