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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO INTERNATIONAL LINER CARGO SHIPPING:
A REVIEW OF PART X OF THE TRADE PRACTICES ACT 1974

DR R.N. BYRON, Presiding Commissioner
DR R. STEWARDSON, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 28 JULY 1999, AT 9.33 AM

DR BYRON: Good morning, ladies and gentlemen. Welcome to the first public hearings of the Productivity Commission's inquiry into the regulation of international liner shipping under Part X of the Trade Practices Act. I think I should probably just make a brief introduction of why we're here before we ask the first witnesses to give their evidence.

The inquiry comes about as a result of the national competition policy which requires a review of legislation that is thought to be restricting competition. Part X of the Trade Practices Act was put on that list as a topic to review because it does provide exemptions for practices which otherwise would be in conflict with the terms of the Trade Practices Act under Part IV.

This inquiry is not really into the liner shipping industry itself or its prospects or Australia's international trade or its prospects, but rather into the most appropriate regime for the regulation, if any, of the international liner shipping industry. But of course to be able to answer that question we do need to have a very comprehensive understanding of the history of the industry, its structure, how it works and the impact of different regulatory approaches on that.

Since receiving the terms of reference from the Assistant Treasurer to conduct this inquiry about four months ago, we have issued first an issues paper - there are copies over here - and about a month ago a position paper, which was very much an interim position paper that doesn't represent views that have already been cast in concrete. But we thought prior to holding the public hearings it would be important to give all participants at least a preliminary view of how we're interpreting the information that had been received. Our final report will go to the government - the due date is, I believe, 12 September. When it will be subsequently released is of course at the pleasure of the government.

As always with Productivity Commission hearings, we try and keep them as informal as possible but, as you will notice, the proceedings are being recorded and there will be transcripts made. As usual, transcripts will be sent to participants for checking and then - again, as usual - we will be placing the checked transcripts on the Web site. Hopefully that will happen within a week or two, and copies of the transcript will then be available to not only participants but anybody else.

To move on to today's proceedings, although my associate Dr Stewardson and I have met with the four of you before, I think to assist the transcripts and for the purposes of identification, could you introduce yourselves and your affiliations first, and then make a presentation to your submission, and then we will have some questions and answers after that. I am already aware that two of you have to leave by 10.30, so we will try to take that into account too. Thank you.

MR RUSSELL: Thank you, commissioner. My name is Mr Llew Russell, I'm the chief executive officer of Liner Shipping Services Ltd.

MR MEURS: My name is Hans Meurs. I am director for Australia and New Zealand P&O Nedlloyd.

MR IGUCHI: My name is Hisato Iguchi, managing director of NYK Line, Australia.

MR DRESCHER: I'm Achim Drescher, managing director of Columbus Line, which is a company of the Hamburg Süd Group in Hamburg, Germany.

DR BYRON: Thank you very much. Mr Russell, are you going to speak?

MR RUSSELL: Yes, I would like to introduce it, thanks, commissioner. First of all, we have made two major submissions to the inquiry. We refer to the main submission, which is the larger one, and we have of course made a supplementary submission recently commenting specifically on the position paper. The thrust of those submissions, certainly in the supplementary submission, was to support the interim conclusions reached by the commission in its investigation, or in this review, on the basis that criteria for regulation of this industry - and picking up the point you made regarding addressing this from a pro-competitive or a competition policy point of view.

The main thrust which we believe is reflected in the position paper, at least in our submission, is to first of all determine what the Australian government requires of the industry in terms of liner shipping policy, and then to really examine the existing and possible future regulatory systems against those criteria or that policy. This was the main thrust of our submission, and we note in the position paper too that the criteria for regulating this industry is very close to what we believe is Australian liner shipping policy, in terms of trade facilitation and promotion, and it's particularly important in this is of course the views of Australian shippers. We are service providers and, being totally customer focused, are very concerned and are involved with on a day-to-day basis those views.

We have in the supplementary submission also addressed some of the specific issues raised there in relation to discussion agreements and particular policy issues as well as the possibility of alternative regulatory regimes. But overall it is a firm view of the lines that we represent - now 29 international liner shipping operators - that Part X modified in the way we have suggested would fulfil Australian government policy in relation to international liner shipping, be consistent in fact with national competition policy and, importantly, support the efforts of Australian shippers in their liner trading efforts. Therefore, as I said, in conclusion we support very much the interim conclusions reached by the commission.

MR RUSSELL: Thank you very much. Would any of the other three gentlemen care to add anything at this point?

MR MEURS: Not at this point, no.

MR IGUCHI: No.
DR BYRON: Thank you. I would like to put on record the commission's thanks for the amount of work that you have put into the main submission and the supplementary, and also for commissioning the work by Meyrick and Associates. As you know, these inquiries rely very much on hard quantitative evidence where there are all sorts of opinion around, but what we are really trying to get are the facts, the hard evidence. Those three submissions, your two and Meyrick's, have provided us with a lot factual information which we do value very much, and we thank you for the quality of information and the work in that.

MR RUSSELL: I could just add there, commissioner, that we would be happy to make Mr Meyrick available in terms of - we note in the position paper, for example, that you wish to develop the economic arguments further, and we would be happy to make him available to assist you in that if required.

DR BYRON: Thank you very much for that offer. I'm not sure at this stage whether we'll be taking it up, but thank you. Could I start off with a couple of general questions and then I would like to move through some of the issues that we flagged in the position paper as the loose ends or the areas where we are still, if you like, fishing for information to be able to come to a firmer decision which relates to the discussion agreements and land-based charges, and perhaps the role of where importers fit into Part X, these sorts of things.

Firstly, in terms of the general overall situation, the impression that we are getting from a lot of work is of substantial overtonnaging on a number of the trades out of Australia, and that would seem to be consistent with other information we're getting that some of the liner shipping business hasn't been terribly profitable. The reason, you'll understand, for us being interested in profitability is because of the assertion that conferences have market power and therefore extract excessive profits. Could you help us at all in that line in terms of the factors that are affecting the overall profitability of liner shipping out of Australia at the moment?

MR RUSSELL: Yes, and I would ask my colleagues to comment in relation to that issue. Certainly there has been overtonnaging exacerbated by the Asian financial crisis and downturn, and it is very substantial at the present time, and I think also the high level of competition that prevails intra and interconference as well as between conference and non-conference operators, which are related issues of course. And I think increasing costs and operating costs that have been experienced, with no significant diminution, for example, in stevedoring costs in Australia at the present time, or in the recent past, are the major factors that have been involved. But I am happy to open it up to any comments.

MR DRESCHER: Shall I start, commissioner. Perhaps if I describe the situation of our trade route, which is Australia to North America, which is probably one of the longest but also thinnest trade routes. By thinnest, I mean it's a relatively small cargo volume when you compare it with the large east-west trade routes, Japan to Europe, Japan to North America, which are very heavy routes, and Europe to North America

which are equally very heavy routes. The north-south routes, of which Australia is a focal point, are all very thin and usually very long. You therefore need rather large fleets to provide proper frequency for Australian exporters, and obviously also for Australian importers.

Even in such trades competition is very heavy, which surprised us, especially over the last 10 years, because we always felt a little bit more protected here because it is a more expensive trade for an investor because of Australia's very large perishable commodity export. So you need vessels that have refrigeration and you need the infrastructure for perishable commodities which is much more expensive than in the normal large east-west trade routes. Also in Australia you would use much much smaller vessels than in the northern hemisphere, where we now see vessels with 6000 TEU capacity while in Australia you see vessels up to, let's say a maximum of I would say 1800 TEU. In our trade we have up to 1300 TEUs and that's really it. So with fewer units the costs are simply much higher.

If I can now come to these cooperations between shipping lines, no matter whether that is by a conference or talking agreements, we feel that you need these associations in order to come to what is virtually a necessity, that lines can actually cooperate financially, meaning that they can pool vessel numbers, because otherwise it is almost impossible for a single operator to raise the funding for one single fleet. In our trade from here to the west coast you need a minimum of seven vessels to provide a relatively proper service, for one single carrier. I mean, we are a private company and for us it would be an enormous mountain to climb. We would have to provide seven modern vessels in one go. Therefore those partnerships are, to my mind, necessary. You even find those partnerships in shorter thick trade routes but, to my mind, you need them far more in trade that goes from Australia.

In our trade you also have a completely changed situation since 1 May when the United States law deregulated. I now have to say that our financial environment has dramatically changed, virtually overnight, and we now have to deal with a competitive environment by pricing, which we haven't seen before. I think you have the numbers of shipping lines that have worked in our trade over, let's say, the last 20 years and it's a two-digit figure of companies that have come and gone again. I think that's unfortunately the same thing in other trade routes, which really explains my earlier point that you need these cooperations to be viable.

DR BYRON: Coming back to my opening remark there, the reason for this inquiry is because there was a perception in some quarters that Part X was in some ways inconsistent with the national competition policy in that it provided a blanket exemption for practices that otherwise would conflict with the Trade Practices Act. Mr Russell, in your statement I think you made the point that the current regulatory regime under Part X was consistent with the national competition policy. That, I think, is a point that we're going to have to resolve. I was just wondering if you could elaborate a little bit more on your argument as to why it's not inconsistent.

People who don't know a great deal about this industry might simply jump to the conclusion that a shipping conference is just another form of cartel that's out to extract monopoly profits and take advantage of their customers, so I can give you a few more minutes to put on record your rebuttal of that.

MR RUSSELL: Thank you, commissioner. Yes, I refer really to the Hilmer committee report on national competition policy where, at the beginning of that report, they set out the criteria that committee believed should apply to the application of national competition policy. When we view the operation of Part X in practice, it meets a lot of that criteria - I won't say wholly or completely, and perhaps no industry would meet that in whole. What I mean by that, if you looked at that criteria - and regrettably I don't have it with me - it referred to, if you like, being in the public interest, and that's an issue that you've developed in your position paper; how you define that. We would suggest that in this industry the interests of shippers and how they see their interests being protected and promoted is a very down-to-earth, pragmatic and important definition of public interest. But of course that can be debated.

The other criteria related to the level of competition in any particular instance. There's been a lot of evidence presented to the commission to show that. I do add, in fact, a comment to what Mr Drescher has just said, that the level of transhipment - which in itself is a function of globalisation - has, in the last five years particularly, dramatically increased the level of competition in any one particular trade area. That fact, as we mentioned in our submission, shouldn't be underrated. There is a very high level of competition and that's evidenced by, of course, extremely low freight rates at high levels of service. In fact I don't think in the history of Australia's international liner trade have shippers had such a high level of services at extremely low freight rates.

So it's in that area, I think, when you match that criteria against observable facts, you come to the view that although prima facie Part X may look to be anticompetitive, it is far less than it looks at first blush. You made the point about being a blanket exemption. Of course with the 1989 amendments it reduced that exemption quite dramatically and there's really only, we would suggest, minimum exemption necessary to facilitate Australia's international liner trade.

DR BYRON: On the point of transhipment, I think your submission and also the Meyrick submission emphasised the growth in transhipment, arguing that even if your conference does have a very large market share on direct trade, there is still competition and contestability through the transhippers. I think it's not unfair to say that we've been having some difficulty getting an accurate handle on the actual volumes of transhipment. It's obviously grown a great deal over the last five years and the data aren't always as up to date as one would like. But I think it's also very important that we be able to make an assessment of whether this is just a temporary phenomenon or whether transhipment is here to stay and likely to continue to become bigger vis-a-vis the direct trades. Could you help us?

MR MEURS: At least it's not going to reduce. It's likely to become bigger actually.

MR DRESCHER: Commissioner, may I add something? For the exporter, and of course also the importer, the growth of transhipment carriers is probably a good thing because it provides more price competition, which for a good number of commodities is nice. I am talking about processed mining products. For those products it doesn't matter how long it takes to bring them somewhere and whether you transload them a few times doesn't matter to the product. But Australia has a very significant share of perishable commodities on the outbound lanes and exporters of perishable commodities don't like these products to go through various weather zones.

A good example is wine. When you export wine from Australia it will always go through two seasons. It starts here in summer and goes through into winter season, and the same with meat, with fruit, with seafoods. They don't like that, especially if they don't have precise control of how long, let's say, after discharging the container in Singapore, the container will sit there before it goes on the next vessel. There are more factors even. If the trade between Asia and North America - I'm more referring to my trade - is very healthy, the transhipment cargo is only a sort of additional fill-up matter. Sometimes they don't want it and sometimes they do want it.

So again, for certain commodities it adds to price competition. Other commodities simply don't want it. There's only one area in Australia where - very reluctantly, I think - they accept transhipments and that is Western Australia because, unfortunately, most of the large liner operators, independent ones and conference ones, only call at the eastern ports - Melbourne, Sydney, Brisbane - and so those commodities have to be railed from Fremantle through to Melbourne and have a real waiting time and transloading. So they prefer to go straight from Fremantle, using the example of Singapore, and then to the world. But the large volumes really prefer direct services and I believe that a trading nation like ours here cannot afford to push our foreign trade, or foreign minor trades, into the transhipment segment.

MR RUSSELL: Can I just add to that, commissioner, that that's very true, and because shippers have shown a wish to maintain direct services but have equally shown that particularly the freight-forwarder controlled cargo and so on - to use transhipment as a lever. And it has been introduced and been used in particular trades very effectively to increase the contestability of the industry. Just in the last few days there's been an outlook conference at which Prof Trace, who's here in the room, was present, and the points was made that transhipment will increase, particularly through South-East Asia.

Even, for example, if there's greater processing of wool into wool tops in this country, which for a number of reasons looks to be a possibility, it could well be that transhipment will become more attractive to them than it is now. Also recently we had a visit from the Port of Singapore Authority Corporation, trying to sell in fact their reefer transhipment services in Singapore - in other words, increased facilities to

handle refrigerated cargo, picking up the point about frozen meat - and they are making a great effort to attract greater trade through Singapore.

The last point I'd make is that it has to be recognised that when you're looking at Australia I think you have to also look at New Zealand. There are a number of trades, particularly the Europe trade, very dependent on what happens in New Zealand - for example, northbound refrigerated cargo which, if lost to certain lines, could well mean that the direct northbound service would be under threat. I think in summary it's a situation where we see continuing growth in transhipment cargo but balanced, I think, by the shippers' desire - where they can at the right price and the right level of services - to support direct services.

DR BYRON: The comments that Mr Drescher made reminded me that some of the shippers we spoke to commented on what they saw as the market power of the conference on the North American trade, particularly with regard to refrigerated containers. It seems that there hasn't been a great deal of new entry, it seems to have been a quite stable trade recently. Is there anything you can tell us on that?

MR DRESCHER: Commissioner, I don't know whether you have that paper which shows the historical sort of entry of shipping lines which then again disappear. I'm quite amazed because I don't think it was that long ago we had to establish Columbus Line and we were sort of the newcomer and suddenly we are the oldest shipping line in that trade. I think the North American trade has an enormous number of transhipment operators and they focus on the southbound trades. Let's keep in mind that the US is still Australia's largest supplier of investment goods and unfortunately also a lot of consumer goods. They are very often assisted by forwarding agents, and forwarding agents, of course, seek out the cheapest opportunity and they are very often with transhipment carriers who are opportunity carriers. As I said earlier, in times of small trades they operate more strongly.

During the last period where the Asian countries didn't buy large volumes from North America, there was suddenly space on those ships in their direction and then transloaded down to Australia, so it had enormous impact on our ability to operate break-even. And you will probably notice that our trade is presently not in a very healthy state. But for meat it's a different story. I think when you interview exporters, exporters find it difficult to understand that. For example, the largest single commodity is meat to Japan, to Korea, to Europe and to North America. They find it difficult to understand why has the North American trade the highest rate, which was substantially higher. I believe there are very good reasons.

We are still a bit sad that Australian waterfront rates haven't really moved on after the events of 12 months ago. We must not overlook that Australia on the waterfront is far more expensive than New Zealand but much much less expensive than the United States. To bring a container of meat, offload that container in an American port - the largest one is Philadelphia for meat, the second-largest is Los Angeles for meat - it costs about $US550 just to bring that container, take that container off the ship, sometimes have some waiting time in the terminal and then

bring it out through the terminal gate. Outbound or inbound is virtually the same cost. In Australia it costs about $A250. So that just gives you that comparison, but also tells you how expensive it is to handle that container with meat in a North American port.

Then in the past we had to pay for the expenses to bring that container to the end-user, which is usually a pattie plant where they make the hamburgers. To move that container, let's say, from Los Angeles to the east coast, is $US2500. A significant volume of these containers with meat have to move to those destinations, or they move a significant amount. Hans, I would say 25 per cent has to move to the mid-west - Chicago, to those areas which are the US meat areas - and that costs well over $US1000. So the costs are enormous in wharfage moves which you don't have in other trades.

However, our rate was $5600, and we have today rates - as you know we now compete very very seriously by our price. We no longer know what P&O quotes, they don't know what we quote, and we battle for the clients. From only $5600 in the first quarter of this year, we now see rates that are $3600, $3700, $4200. So you see a movement in a very very short period of time and we still have to learn to live with these because it goes straight into margins which are not there.

MR MEURS: Can I add something to that. You're quite right that there are, with this particular meat trade to the east coast of North America, basically only two carriers who do that direct.

MR DRESCHER: C and S - - -

MR MEURS: C and S and Breakbulk. So if you look at it from that point of view, there is not a lot of choice. But it's right that if you ask a meat exporter, "Do you have any choice?" he says, "Well, I don't really have a choice," and that is why there are only two carriers, because you know there's a high entry barrier financially to do that because, as Achim said, it's a very thin trade. It requires very specialised equipment, and it is basically geared for the northbound meat, because southbound they have more than enough choice. You will have to have reasonable revenue to do that, and I don't believe that any Australian exporter has lost one contract in the United States because of the freight rate.

I don't like the fact that there are only two shipping lines as a choice. As he says, if they ask, "Do you want to pay more?" you will say, "No." But that's not the right question. The question is, "Do they get the right service for the product in order to be competitive in the United States market?" and they get it so you have to be very careful how you ask the questions.

DR BYRON: Thank you very much. Just to clarify, Mr Drescher, you mentioned the change since the first quarter. Is that a result of the change in the US regulatory regime on 1 May?

MR DRESCHER: Yes, of course, because during the first quarter we still had, as all last year, the conference price, which basically was quoted not only by the conference carriers but also by the other carriers. You are aware that there's a large conventional carrier and the trade from Australia to the east coast of North America - it's Swedish - also two carriers which pooled their vessels and operate together, so we have actually two conventional carriers. We have P&O and Columbus Line, again operationally as a joint venture, but unfortunately in marketing I find it's Dunkirk every day.

MR MEURS: I would say it is Normandy.

MR DRESCHER: Mr Meurs is Dutch.

MR MEURS: And you are German.

MR DRESCHER: The competition to the east coast is of course - the dampener is the very large carriers such as Maersk, for example, and various other carriers who operate as transhipment carriers. But it's interesting to see, as I said earlier, exporters of perishable commodities don't really like to use transhipment operations. They want the direct carriers.

MR MEURS: That resistance is gradually diminishing.

MR DRESCHER: But you had a more specific question.

DR BYRON: I was going to say, if the Singapore Port Authority can convince people that they're much more reliable and the cargo is not going to be off-loaded or disconnected from the electricity supply or something, then there is the risk that that element might grow.

MR MEURS: That has been particularly successful for New Zealand. New Zealand exports far more refrigerated products and cool products than Australia and they have been quite successful in hard frozen. Chilled is still a bit of a problem.

MR DRESCHER: Commissioner, may I make one statement which is not directly connected to the issue. We say all the time that we are unhappy that stevedoring companies have not yet lowered their rates. There's one thing which I think is immensely important. In the past we couldn't do proper planning because we had so many disputes on the waterfront all the time. They were either between management and stevedores or demarcation disputes and so on. In fact in those days you couldn't even insure against strikes in Australia. Today, since the big dispute with Patricks, we have a very orderly process. While it's not cheaper, we can now plan, exporters can plan, importers can plan, and for us it's virtually a smooth operation, but it's still expensive.

DR BYRON: Thank you very much.

MR MEURS: Commissioner, can I raise something about the profitability that you raised in the beginning. At the moment there is a myth that shipping companies make huge profits and exercise market power. I would be glad to show you the figures. There is hardly any shipping company which makes a return on capital employed over 5 or 6 per cent. Most of our customers, be it upstream or downstream, make returns on capital employed which are far higher. Last week I was in the port of Tauranga, and with great pride they showed us that they had a turnover of $48 million and a profit after tax of $18 million. I would love to be there. Probably our company is best placed to give it to you in the annual report we produce because we only do a spiel on that on container shipping. Columbus is a private company so they don't issue annual returns. NYK also do other things outside container work. But we have a turnover of $US4 billion and we make a profit of $150 million.

MR DRESCHER: And that includes your cruising operation?

MR MEURS: No, it does not include that.

MR DRESCHER: It does not? Sorry.

MR MEURS: Of course not, otherwise it would be a bit different. Our pure shipping company does not make a profit on sales which is more than 3 or 4 per cent, so there is the unconfirmed and I think untrue myth with exporters and importers that shipping companies make a huge amount of money. We are probably getting back a lot less money than they do, I'm sure about that, and again they use often these sort of arguments that we are exercising market power. Well, the number of operators that do import and export to and from Australia is so great and it is so transparent that it is impossible for any group of companies, or even one single company, to exercise market power.

MR RUSSELL: Adding to that the point that was briefly mentioned before: each carrier markets its own service very aggressively, irrespective of whether it's part of the conference or not a conference. They all individually market their service, and there's a lot of competition there to increase market share or whatever. But a lot of people don't realise that there's no conference marketing, it's all individual line marketing.

DR STEWARDSON: I would like to endorse what Dr Byron said about appreciation of your submissions, both of them, and in connection with this discussion, particularly the one in response to our position paper. You've addressed a lot of the issues that we've been asking about in a very thoughtful and useful way, and we appreciate that. The object of today is clearly to probe and question about that, but we do appreciate that you've given us a very useful and thoughtful basis so that we can enter into a helpful discussion with you. I'd like to ask one more question about this matter of competition in general. You say on page 4, and I quote:

It can be clearly proved that for more than 15 years a high level of competition has prevailed in the international liner shipping industry serving Australia.

Clearly from the sort of comments that we've made in our position paper, we tend to agree with that statement, but it's a very important statement to be able to justify to the government to whom we're making our report and to others reading it. It is more obvious that in very recent years prices have been low. There can be other reasons for that, such as the downturn in Asia and all that sort of thing, as well as competition causing the very last few years' situation. You've mentioned transhipment. Again, that is something which you've said has developed in very recent years. We've talked about the low freight rates. Again, while they have been falling for some time, they're particularly low at the moment.

The profitability data that you mentioned, Mr Meurs, would be very helpful to us and, if you're able to let us have that -on a confidential basis, if you wish - over a number of years in the past in terms of rate of return on capital, that would be very helpful, rather than just for the most recent year when clearly things are bad. And if any other of the companies are able to provide that sort of information, that would be helpful. But my question really is to you, acknowledging that you have mentioned prices, profits and transhipment, what else would you say to prove that point about the competitiveness of the industry over a long period of time?

MR RUSSELL: Commissioner, we attached to our main submission a review of services in the last five years, which showed a number of departures from direct competitors, as it were, but a massive growth in transhipment operators. I think one way of looking at that transhipment issue, just quickly, is to actually focus on the massive increase in services being provided by transhipment. I think outside of those factors it is a highly contestable industry, and entry and exits have been shown to be frequent. Perhaps one would have to argue that the last few years have slowed down in those entry and exits, in the sense of looking at the list in the American trade.

Going back 20 years there was an enormous amount of entry and exits in that particular trade, but if you look more recently the Cape Line came and went very quickly in the north and east Asian trade, there's been even in the last 12 months very large entry into that trade from lines directly that weren't in before.

The China shipping group that's called the China Container Shipping Services has entered, for example. There's been a consortium that was confining itself to the South-East Asian trade. It's now entered directly into the north and east trade. This has all occurred in the last 12 months. There's been movement in many trades in terms of direct competition in addition to, as I said before, the increase in transhipment. There have been ones that have left and, of course, we have the examples of South Pacific Shipping which was serving the Australian and New Zealand trade; that was liquidated. Before that, the ABC Container Line was liquidated when they found that they couldn't continue.

I think one of the issues for this inquiry is the requirement for some stability, not at the expense of high prices or low services, but the requirement for some stability in long-term selling forward or even short-term selling forward really. These events are enormously disruptive to the trade and to the shippers concerned, and a more volatile environment than even the one we would have I think would seriously raise that prospect. But, as I said, you read very regularly the new lines coming in to compete directly. Is there anything else?

MR MEURS: You asked what is next going to happen. I think what is next going to happen is that the number of players is going to reduce. At the beginning of last week, or halfway through last week, the number 1 bought the number 4 container carrier in the world and it's now twice as big as number 2. This will continue, because number 3 and number 4 will get together. So because the profitability only goes down and because you can only make a reasonable amount of return to pay for your investment, which you have to continue to do because the market forces require you to do that is by reducing your cost base, and one of the things is by rationalising the industry.

I am part of a company which merged two years ago and now Sealink has been bought by Maersk and tomorrow we will probably merge with another company and somebody else will merge with another company and the number of players will reduce because there is not enough meat on the bone any more. That is what I think will happen next. Not that competition will reduce because of that; there will still be more than enough players to make sure that market prices remain as they have to be; the forces of supply and demand will continue to be there, but there will be less players just because you need more profitability. The same happened in the airline industry in the United States when it deregulated. It went from four to 20 and now we are back to four, and there is still competition among them. The consumer has not been disadvantaged by it, I think.

MR IGUCHI: Commissioner, I would just like to add one more point. There are not very many but several carriers who are just purchasing slots from the existing vessel operators and it is very easy for them to enter and exit, and once they have a contract for say one year or two years, during which time only interest for them is to earn income, revenue, irrespective of whether it's profit or loss - very little revenue is better than nothing, so that makes competition even harder, so we have to protect our interests from that kind of player. We are very serious about that at the moment.

DR STEWARDSON: Yes. Thank you.

MR MEURS: I can give you an example also about how the market forces work. If there is a customer who ships 5000 containers a year, he requires a reasonable, stable shipping service to do that with enough capacity in order to accommodate his needs. If another carrier who can only, at best, serve that customer for 50 per cent made that customer quotation, that quotation would drive the price down off the 5000 TEUs he carries. The customer uses the marginal freight rate to get the best freight rate for his

whole transport requirements, and that is what always gives us the problems in maintaining profitability.

I always say there's 5 per cent of the customers who decide the price of the other 95. Particularly forwarders are very good at that. They pick up the phone and in half an hour they have driven the price down by a hundred dollars. That is the unfortunate situation we are in, partly because there is overcapacity in most of the trades and because customers and forwarders know to play the game quite well. If you continue doing that, our break-even point to make money gets higher and higher, so we need to fill the ships more and more, so the need to secure cargo becomes bigger, so you drive the price even further down - - -

DR BYRON: A spiral.

MR MEURS: We spiral down, and that leads to this consolidation in the industry at the end of the day.

MR RUSSELL: Can I just make one quick point. Mr Meurs has referred to the size of the ships and Mr Drescher mentioned before about 1300 to 1800. That is certainly in the American trade, but in the other trades, we would be averaging 22, 23 hundred, up to 2,900. I would say on average it would be about 2300. Actually if you looked at the Australian trades overall, even weighted them some way, you would end up with a ship of probably 21–22 hundred TEUs. So they're just harder to fill, to pick up that point. The second one, which I should have mentioned before, is that the growth in freight forwarder activity, particularly with containerisation, has dramatically increased competition in this trade, in this industry, through various means, including the one that Mr Drescher mentioned.

DR STEWARDSON: There are a number of smaller points relating to this topic of competition, as well, but I think they are ones which, if you are happy to discuss with us and with the staff, we needn't do here. They relate to the precise definition of the prices, the indices of which you have given us - just precisely what they're based on - and also the matter that Dr Byron referred to in passing, the percentage of cargo carried by transhippers. The numbers we try to get are rather different from some that you have mentioned and it would be helpful if we could discuss those to try and establish them, but I think we can do it outside the meeting.

MR MEURS: Statistics are not very good in that area.

DR STEWARDSON: Indeed.

MR DRESCHER: Commissioner, I have one point about competition and I would like to focus on competition here for Australia, inbound and outbound. I think it is actually quite easy to see how the competition works by simply observing what shipping lines do and, in past years, really the key issue of conferences which previously had focused on prices and on equal prices for either the same commodity or the same type of service, has disappeared. These days conferences really focus on

the service patterns, the various service features, and they try to maintain the same service features; the type of ports they want to call at, the various additional charges and so on.

In recent years the competition is no longer just at the ocean rate, the blue water rate, from port to port, but it is also quite heavily on inland charges. Shipping lines go to the clients and say, "Look, I will quote the same ocean rate as the other one but I will help you with your depot costs, I will help you with your trucking costs, I will help you with your handling costs." I think the American trade was the last trade where we had similar price arrangements because of the very, very strict rules the US administration has put on shipping lines, but that has now gone. So we are now working in a completely free pricing regime, which the line, to my mind, took on with enormous enthusiasm and I fear - I have to agree with what Mr Meurs said - that one or two of our carriers will probably disappear because they can't live with those rate levels.

Another big issue is that you can actually observe in the various trades the volumes of cargo that go out or come in and can very easily establish the carrying capacities in those trades and you will find in all trades that the carrying capacity is up to 100 per cent larger than what actually has to be carried. There is no industry where with such an overcapacity you have no competition. I think the problem with our industry - and I think whenever you interview the industry they will all tell you - is we have dramatic competition, but when I just think of the automotive industry in Australia or the banking industry in Australia, both these industries have a big share which is Australian-owned; which is Australian-managed and owned.

I think we have done a very poor job explaining our activities to our clients in Australia. I am talking Australia because it is unfortunate that in 1996 after ANL went into overseas hands we really have very little left that is Australian-controlled and Australian-managed and, unfortunately, with all these carriers being overseas carriers, we probably don't have enough resources here to really educate our clients about the details of our industry. As you know, we do some market information but they are more promotion-related instead of explaining really the situation of our industry in the market. I mean, if you go to English, Dutch, German, Japanese market, they are much closer to the shipping industry than in countries like New Zealand and Australia.

DR BYRON: Thank you. I am just conscious of the time and that leads us very nicely to the question of discussion agreements and the role that they play. I am sure you are aware that some commentators are of the view that discussion agreements run the risk of greatly reducing competition in the marketplace and, to put it very bluntly, if it is the independents that are keeping the market honest and holding the knife to the throat of the conference, but then discussion agreement between the conference and some key independents emerges, there is a presumption that this will greatly reduce competition in the marketplace and therefore again result in some net detriment to the Australian shippers. Can you just clarify for us how you see the role

of the discussion agreements. I presume you think that they don't constitute a threat to competition and the Australian exporters.

MR RUSSELL: No, and again I think, commissioner, I would refer to the observable facts with their operation. These types of agreements have grown in popularity - if I can put it that way - in the last few years in certain trades, and it is a balance. I think the comment made in the interim report is a very important one, that many of the advantages of these types of agreements go back to the advantages of having support for the bus-like services provided in liner shipping in terms of stability, in terms of level of services, and of course there is a comment which we made in our supplementary submission that there is commitment from those lines to the trade, which is often overlooked in people's discussion of discussion agreements. All of those operators or members of those agreements commit to the provision of minimum levels of service and I think that is an important commitment on behalf of the shippers.

I think also they are pro-competitive in that it is a non-binding consensus in terms of reaching rates. We have had inquiries from the competition commission in certain cases to explain how that comes about and in fact all notices now from discussion agreements in relation to any rate restoration uses those words because at any time any member is free to deviate from that agreed price, and that could be a credit, a surcharge, a rate restoration, whatever - one can deviate from it. I think that's important. Whereas in the normal conference constitution, at least theoretically the agreement says they can't. As we know, that has not necessarily happened and in fact the distinction in practice between the conference constitution and a discussion agreement is actually declining, because when you look at the impact - there has been a very large one, for example, the South-East Asian trade for three years now - rates have continued to go down. There has still been a high level of competition. So the operation of these agreements in observable facts has not resulted in reduced competition. I think, as I get back to it, you only have to change the name slightly and you'd call it a conference.

DR BYRON: A very open conference.

MR RUSSELL: A very open conference. As I said before, I think most conferences in practice are pretty open today in what happens. But we're well aware of the concern they've raised in certain quarters and, again picking up Mr Drescher's point, I think it needs to be explained together. I also emphasise the fact that of course they are still geographically trade related, therefore there is still that high level of competition between shipment services and competition from freight forwarders, so many competitive elements still prevail in terms of those discussion agreements. So we would strongly urge that they continue to be allowed. In fact there is the machinery in Part X to ensure that they are they closely monitored, and if there is any deviation from, if you like, the provision of economic and efficient services, there is adequate machinery in Part X to deal with it.

MR DRESCHER: Commissioners, my competitor, Mr Meurs, just agreed with me that we should be available to you longer, if you would only allow me to do one phone call, and we are here for you as long as you require.
DR BYRON: Thank you very much. We would appreciate that.

MR DRESCHER: If we could just do only a phone call - that's very kind of you.
DR BYRON: Thank you very much for agreeing to stay.

DR STEWARDSON: On page 8 of your latest submission, you say:

> Potentially the discussion agreements can generate the efficiency and service benefits provided by conferences.

My question really is how? My understanding is that it's really the consortia that are providing the efficiency because it's the consortia doing the coordination of the scheduling and the slot swapping, and that that's where the efficiency is really coming from, and discussion agreements per se don't, as I understand it, do that. Indeed appendix B in your first submission says that discussion agreements are more concerned with rates and negotiation of the minimum service levels. My question is, how can the discussion agreements actually positively improve the efficiency?

MR RUSSELL: In response, and following on from the points we've made in here - we've already referred to the transhipment services and competition, but I think the efficiency of conferences generally is to act as an umbrella to allow the total range of services to be provided. I would disagree that the efficiency is solely related to consortia. I think there is a danger here of focusing purely on the technical efficiency through the close consortia arrangements. Certainly it's easier, I suppose, to observe at that level but they are interlinked, if I can put it that way. The umbrella type of pricing arrangements, whether they be conference constitutions or discussion agreements, really are for allowing and facilitating that more technical efficiency and advance, if you like, of the technical barrier. Therefore discussion agreements play a very important role in maintaining that efficiency.

There are, for example, three consortia in the South-East Asian trade facilitation group, but the individual lines of course also add to that efficiency in terms of the overall provision of services under the agreement, and the range of services and the flexibility and capacity provided under that agreement are provided by individual operators. Therefore, I do think it gets back to what are the benefits of conferences generally - are exhibited and provided for under discussion agreements. That has been reiterated in our submissions. So I think there is a whole range of efficiency areas there that are supported by discussion agreements.
DR BYRON: Just to clarify my own mind on that, what you're saying is that there are a range of different benefits that come from different types of structure. This reminds me in some ways of a Russian doll, that within the market there is the discussion agreement, and within that there's the conference and within the conference there's the consortium, but there are different types of efficiencies and gains from different types of structures at different levels.

MR RUSSELL: Yes.
DR BYRON: It also comes down to a philosophical point. The Meyrick submission argued that on the one hand you say the participants in the industry should be allowed to work out whatever structure best meets the needs of the industry in which some people want to form consortia or conferences or DA, whatever, as opposed to the ACCC view where you have a sort of a template of what you think the industry should look like, and the presumption that mergers will result in excessive market power which will result in abuse and damage. The point I'm getting from what you said is that there are some advantages gained by being part of a consortia, but being part of a conference or part of a discussion agreement give different sorts of synergies or pay-offs at different levels. Is that the message I should be getting?

MR RUSSELL: Yes, precisely, because I think in terms of pricing and for other reasons, yes, they're the foundation for the other more closer and technical agreements.

MR BYRON: I guess the ACCC's concern would be that the more people included in the agreement, the greater potential for abuse of market power. But as you say if on the other hand the agreements are relatively looser or less binding. The empirical question is whether there are other checks and balances on abuse of market power.

MR MEURS: I think the market is the best check and balance that exists. I would assume that at a certain point of time there will be somebody who will stick out his finger and say, "Look, this goes a bit too far." That's the point where either a shipper or another interest will lodge a complaint. So I think it is limited. It's not like it was 50 or a hundred years ago when the conference said, "This is it" and that was it; there was no appeal anywhere else because there was no alternative or choice the other way. In this industry there will always be the odd one out who will allow you the choice and will make sure that the group keeps within the boundaries of what the market can bear.

MR DRESCHER: Dr Byron, I think in your analysis you have to be more concerned about the smaller exporter who, for whatever reason, is not part of a commodity group or an industry group. Obviously they have to be in some way protected. But we have of course the situation in Australia that most companies form part of industry groups or commodity groups, and as such have almost more power than we as their servants. I think there is a wonderful balance between the two sides of the market, but I would still like to underline that the best tool is to just simply check how large is the capacity to carry products, and for the last year it has been so enormous that there is simply no concern that it can be misused.
DR BYRON: I was going to make the point that in looking at the regulatory system, we're not just looking for a system that applies in today's market conditions, but we have to look in the foreseeable future - maybe five to 10 years ahead. Maybe Part X will be reviewed again in another five to 10 years. While I accept that the capacity is double the actual cargo volume at the moment and that that is putting intense market pressure on and giving attractive prices and good service to Australian

shippers, we have to ask the question, how likely is it for that to continue? Would the situation still be like that in five or 10 years' time or will the overtonnaging and so on disappear? That's why I think it's important to get away from the very short-term condition today, complicated by South-East Asia's financial downturn and so on.

MR MEURS: The principle of economics will prevail also in our industry, and one day you will have a better match between supply and the market. Obviously this can't go on forever, but it is a cycle. It was a seller's market and today it's a buyer's market and tomorrow it will become a seller's market, but probably not to the same extent as it was in the past. That, I'm sure, will not be the case.

MR DRESCHER: Our main concern at present is - and will remain so for the next five to 10 years - that five years ago the carriers that served Australia were all what I would call niche carriers. They were carriers that focused heavily on perishable commodities. They were not participating in the large global trades. In recent years we have seen all the major global carriers starting to serve Australia with their enormous market power, and now with the facility to do global contracts with exporters, they have really doubled and tripled the competitive environment. For carriers like us it is an enormous concern and problem which we have to try to solve. The big names like P&O of course have a big history in this country, but P&O were the only global carrier that ever served Australia for a long period. All the other global carriers were simply not here, and they are now starting to operate here because they want to expand into every single trade on this globe.

MR RUSSELL: Could I just add to that: 19 of the top 20 international liner container operators serve Australia. I think also in the last 20 years you have witnessed a massive growth in carriers, particularly from what were developing countries. Now we called them developed, I suppose. But if you look at the Taiwanese and Korean and Chinese carriers, they have grown extremely rapidly in the last 20 years. They have become very large, and I think that has changed the dynamics of the industry.

I think if you did look at the cycle of international liner shipping over a long time, you are seeing the down cycle being a lot longer. Of course for years now carriers here have said, "It can't get any worse" but a year later it seems to be a lot worse. I do think the cycle will have to turn but it will turn slowly. If you look worldwide I think where you will get changes in capacity and demand, particularly in the major east-west trades, there is no prediction that they will actually flow on to the north-south. So certainly in north-south trades you will see, I think, an excess of capacity over demand for a long time to come, regrettably from our point of view.

I think you also you are seeing global carriers entering these north-south trades, particularly Australia and New Zealand, because their competitors are, so they are covering the niches, irrespective of the economics of actually being here. There has been quite a bit of evidence of that in the last few years. So our prediction is that although we do see a tightening, for the reasons that Mr Meurs has mentioned, in the demand and supply over the next few years, and of course as the Asian economies

recover, as you correctly point out, there is still going to be that high level of competition prevailing for at least the short to medium term, so the five to 10-year outlook.

DR BYRON: Would you like to take us into the question of land-based charges, or intermodal?

DR STEWARDSON: Yes, right. We would like to raise with you the matter of land-based charges and really I think they fall into two quite separate groups. There is intermodal and then there are the terminal handling charges and that sort of thing. If we could perhaps start with the intermodal, just to make sure we're using the same terminology, by that I mean transport from the terminal to the door of the customer or vice versa. We're using the same terminology, I take it. There is clearly no problem whatsoever in individual shipping lines quoting door-to-door services, but that's obviously just a matter for commercial decision, as to whether that's what the customer wants or not, so there is no question about that. Some of the discussion on this issue tends to get a bit diverted by talking about that fact, and that's not what we're talking about. What we're talking about here is whether the conference or the discussion group or whatever should together be able to jointly agree prices and other conditions for that intermodal part, as well as the terminal to terminal component.

What we would really like to hear from you is what justification you feel there is for that being covered by the Part X exemption for the conferences to undertake. A view that has been put to us is that the justification for conferences in the terminal to terminal or the blue water component is to do with the peculiar economics of shipping; the fact that you need a fairly large size of ship because of the economies of scale and the fact that you need to fill those ships up to 90 per cent plus as a break-even point. It's the peculiar economics of that business, the shipping part, that justifies the need for a conference to provide an economic service. That same argument which is put to us doesn't apply to the land based components. So the question is: what justification is there for extending Part X or letting Part X continue to cover the intermodal component, the land based component?

MR RUSSELL: I think there are a number of answers, and one is that really it's artificial to some extent to suddenly stop at a point in the through-transport chain where cooperative ventures can provide a better service in terms of price and delivery land based than what can be done by those providing it now, which could be freight forwarders or customs agents or individual shippers doing the land based component. I pick up a point that I think Mr Drescher was referring to earlier, in that at times lines have used reductions in land based rates to compete on the sea side of it.

DR STEWARDSON: Could I just interrupt you on that point. From the point of view of the customer, is that a bad thing?

MR RUSSELL: From the point of view of the individual customer, again, it's a good thing. From the point of view of customers generally it may or may not be, and certainly from the liner carriers it is not.

DR STEWARDSON: I can see that.

MR RUSSELL: But, that's right, from the customer's point of view there may be specific advantage for the shippers involved, but I think you have to look at encouraging rather than inhibiting the development of these services where the shipper has clear choice whether to use his own, or to use someone else, or to use a shipping company in terms of a through contract. That, like many other areas in this industry, obviously requires monitoring. But where he has a clear choice I think you are presenting the shipper with a range of options. I'm talking here of collaborative options so that he can make the choice between a groups of lines, for example, providing a reasonably sophisticated and flexible and efficient inland service, as against a freight forwarder - and there are some very large freight forwarders of course - that could more than match that type of service. So he has that choice.

In fact, in the worldwide alliances one of the major advantages seen was cooperation on the inland side; for example, reducing the positioning of containers, the costs - which is a massive one worldwide and it's a big one in Australia - through cooperation on the land side. That comes from the cooperation they are having, if you like, or emerges from that cooperation on the ocean side. A number of countries such as the United States have recognised these values and provided exemption for the inland component. The only other point I would make, and I think it's a relevant one here, is to note that with the introduction of the GST where the principal carrier provides the ocean and the land it will be GST free.

DR STEWARDSON: But that isn't really relevant to whether it can be done by a conference or not, is it? You can do that as an individual member.

MR RUSSELL: Yes, I agree, except that you are trying to encourage cooperative arrangements in the provision of these services, so the principal carrier is part, of course, of a joint arrangement.

DR STEWARDSON: As I understand it, in Europe this is not covered by the exemptions.

MR IGUCHI: Not any more.

DR STEWARDSON: Not any more, yes. In the US it is covered by the exemptions. Can you tell us about other countries? Perhaps we could take that point first and then go to the other question.

MR RUSSELL: I'm not aware of any others.

MR MEURS: There are not any other countries who have a really intermodal structure like Europe and the United States has.

DR STEWARDSON: Yes, thank you.

MR MEURS: Singapore and Hong Kong don't have it either; South America doesn't have it.

MR DRESCHER: There's also a vast difference between Europe and Australia. In Europe most railway systems are state owned and the various EU countries have big deficiencies with their rail system and they have to subsidise the rail system and they believe that the exporters should deal directly with the railway systems and not the shipping lines. I think here in Australia we have virtually the system that shipping lines offer the exporter the choice: we either provide the service for you and then you pay for it, or you do it yourself and you do not pay for it. Basically shipping lines today are no longer just ocean carriers. We are logistics providers and just in between we use a ship. But we really use trucks, railways, coastal services, depots, terminals - all those features - and they have to be paid for.

A lot of clients find it simply very comfortable because in recent years they could stop having export departments or shipping departments or logistics departments and simply outsource this task to the shipping lines. But of course in all their pricing discussions they focus very much on these inland costs because in many cases, especially in North America, inland costs are a much bigger component than the sea cost, especially as in our trade, due to the competition, we have not been able in recent years to renew our fleets. As you will know the shipping capacity to North America is rather old and the reason, of course, is that we had problems finding the funding to come with new vessels. Now we have reached the point where we just have to and for that reason we feel, as I said earlier, the getting together of groups of shipping lines to afford these funds is almost a necessity.

DR STEWARDSON: The other point that is put to us in connection with this - and it really relates particularly to something you said, Mr Russell, but really what you have all said - is that if one says, "Okay, the shipping lines have exemption from the Trade Practices Act, or parts of it under Part X, why not let them also have exemption for the intermodal things," then what sort of precedent does that establish? One doesn't normally have an exemption from the Trade Practices Act for getting together to exercise better purchasing power. Coles-Myer and Woolworths aren't allowed to agree together. I'm sure they could get a better deal from their suppliers - or perhaps one should say an even better deal from their suppliers - by doing it jointly, and they might or might not pass that on to their own customers, but that's not part of what is allowed under the Trade Practices Act. So it's put to us, why should one allow the shipping lines to do just that on the intermodal part?

DR BYRON: Just to elaborate on that, the other part of that argument is that any group of companies can't just come together and form collectively and say, "We want to make a special deal with the land transport companies." But to say because of the unique features of the ocean part of the whole exercise you've been given an exemption from the normal trade practices rules, that doesn't necessarily justify extending it to other activities before and after the ocean part of the whole exercise. So if the primary rationale for the authorisation in Europe or Part X or whatever is because of the unique features of the marine part of the exercise, what we're

grappling with is why should that exemption be extended to cover things where it wouldn't normally be allowed?

MR DRESCHER: Commissioner, for the exporter it is really one service which he requires. It's the logistic service from his client to the place of his buyer. To split that up into separate factions is very difficult to organise.

MR MEURS: But I think it has also a technical reason, because where does the intermodal begin? Where it has come from is because the shipping lines were issuing the bill of lading from Frankfurt to Chicago. That's where it comes from. So the transport service that the shipping line was offering included land sides on both ends. So it was not really possible to split up the land and the sea part. I think we are making, I believe, a mix up between carrier and merchant haulage and intermodal. Carrier and merchant haulage is that the carrier does the haulage at the conference tariff - or the merchant does the haulage. But the bill of lading is a port to port one. Intermodalism means that you have a Frankfurt to Chicago bill of lading whereby the shipping line has the responsibility for the cargo, from that point to the point of destination. There is no sea and land distinction any more. That is why both in the United States and in Europe the land part was included in the exemption.

DR STEWARDSON: But you said a technical reason. When the shipping line comes to devise a price for this carriage, you have a bill of lading from Castlemaine to Frankfurt.

MR MEURS: Yes.

DR STEWARDSON: Is there any reason why the shipping line can't quote the agreed conference price for the terminal to terminal component and his own price for the intermodal components and add the two together to get one price for the customer?

MR MEURS: It was particular for the United States trade and I'm not 100 per cent familiar with exactly how it came about. But there was no real distinction any more between land and sea. The tariff to the United States was a point to point tariff and it didn't have any sea part and land part any more, so you were not able to split out the two. The discretion that has now taken place in Europe is to exclude the protection on the carrier haulage side from the conferences.

DR STEWARDSON: Yes.

MR MEURS: Because there indeed the conference tariff was saying - I don't know whether it's still, but in the United States trade it was that if the carrier brings a container for the merchant from Rotterdam to Frankfurt he charges X, and that was for all the lines the same, and there you got into the trouble with Coles Myer which go to one provider and says, "Can you provide me these services at this price." That has now been excluded, but there was a specific split between sea and land.

DR STEWARDSON: But as I understand it at the moment under Part X there is an exemption for the door-to-door provided a separate price or a distinguishable part of that price is separated out for the terminal-to-terminal component. So you are presumably obliged at the moment to make that distinction in the overall price.

MR RUSSELL: Yes, definitely. I think just picking up the point about precedent, of course the precedent is to allow this. I mean, it's not like this is a new - you're looking at a new exemption. Of course what you're doing is withdrawing an exemption. So those other industries that feel that a new precedent is created of course, and this did arise from containerisation where the original concept was the container would go from the warehouse to warehouse, and this whole concept - and this is where it's different from the shipper's point of view of course - is that you have a container involved which needs to be repositioned, empty obviously on one leg.

But it really is a question of what greater efficiencies can be developed in this area to position those containers more effectively, and I would suggest that that could well be done by closer cooperation between ship owners in this respect than has even prevailed to date and would again be underpinned by the ability to have a common rate to do so. In Australia the fact is that there is very little of this happening on the Australian mainland, but it is happening in North America. It is happening in Europe where allowed, and it's just very recent that a number of lines have decided not to continue having their haulage tariffs in Europe.

But, for example, as we point out, the wool shippers here in Australia require the decentralised zone charges which are in fact inland haulage charges to be maintained. They see great value from wool exporters to Europe and the wool buyers in Europe in having that facility, so they have seen advantage in it, and I think it is that issue - and particularly with electronic commerce - and the ability to persuade the trade particularly to take it up and the greater efficiencies could well be encouraged more by the collective ability of lines to agree and discuss these issues than if there is that fear that they're not allowed to advance them. So no-one could talk about the pricing on one hand I suppose and the technical cooperation on the other, and in fact that was a debate in Europe for a while, but they really are interlinked as they are interlinked on the sea leg.

MR DRESCHER: But, commissioner, my observation is that most, if not all, exporters want the full logistic service, and if one would split it one would probably give the very large one - you use the example, Coles - a certain feature that would look after the big one but not the small one, and I think it's important to protect the small ones. The exporters, what they actually do is - because it's very simple - when we come to pricing discussions with them they always are prepared - not always, but most of them are prepared because they know what it costs to pack a truck, to do the truck drive from their factory to a depot, store in the depot, and again load and drive to the terminal. They know what these costs are and they very much compare the costs as they find them, and I have the experience that in most cases their own cost structures cannot compete with our structure because we cover the whole market and therefore can offer a better pricing arrangement for these inland services.

We have always had to look at the whole logistic scene as that service that we offer for a price, and we compete with that total price against the other carriers.

DR STEWARDSON: When you say "our" in that comment, do you mean your line?

MR DRESCHER: Correct.

DR STEWARDSON: There's no issue I think about what you as an individual line do. It seems an eminently sensible commercial thing to give an overall price. It's the issue as to whether you have exemption from the Act to agree with your competitors on the price, with your shipping line competitors on the price for that intermodal service.

MR DRESCHER: The practice was actually in our conference that we compared what the various lines can come up with with their inland section and used the cheapest one, because the competition in recent years was more on land than it was at sea. The reason probably that the sea prices were already so low was that in order to give more incentives to the exporter we had to really search for things we could give them - therefore, the enormous focus on land services. I'm giving you now a practical example in a particular trade lane - the lines agreed everybody puts in what he can best do, and then let's use the best performance example.

MR RUSSELL: Could I just add, for example, Coles Myer or Woolworths, major importers, or groups of shippers, either importers or exporters, who have a number of lines they've contracted with for their sea leg and they want those lines to provide them with an inland arrangement. If you didn't have the exemption you would then be saying, "Well, we can't. You'll have to talk to each individual. You'll have to have individual arrangements," and they could well be a lot less efficient and a lot more expensive than would occur if they were allowed, as has happened to date, to negotiate with them as a group.

DR STEWARDSON: I don't quite understand that point. I wonder whether we ought perhaps to move on to the terminal handling charges issue, because - I mean, I think it may throw some - - -

MR MEURS: We're prepared to debate this in detail later on.

DR STEWARDSON: We'd be happy to do that, but the reason I was suggesting maybe we might move on is that I can see a distinction. I can see, I think, a technical reason why, because of the interslotting arrangements within consortium, it would be very difficult for the terminal handling issue not to be part of the overall deal. I can see a distinction, a technical reason, why that is different from what I can see for the moment of the intermodal thing, and maybe in the course of discussing the terminal handling charges you can perhaps relate it to the intermodal if you feel that the same argument does apply to intermodal.

I guess the terminal handling charges issue is one which we'd find it very useful if you would explain from your point of view. There are other submissions which put a different viewpoint. What proportion of a typical terminal-to-terminal cost is the terminal handling charge and can we just very quickly define what we mean by terminal handling charge. Are you including the actual stevedoring? What are we talking about?

MR RUSSELL: Thank you. Yes, terminal handling charges incorporate, in accordance with a formula developed internationally - what we call the CENSA formula - approximately 80 per cent of the terminal costs, so that it's really from sale to gate. So it's all those sorting and stacking charges, administration, lifting, other charges involved in the total stevedoring operation as I said from ship to terminal gate.

As a percentage, well, of course it's been going up I suppose one would say with the decline in freight rates. They are almost universal in our destinations for Australia's exports. They don't apply in Australia at this stage, although it remains on our agenda, if you like, terminal handling charges at origin in Australia; in other words, they're not paid by exporters here in Australia but they are paid, if you like, as part of that movement at destination.

DR STEWARDSON: Can I just interrupt. They're not paid as a separate item, but presumably they're paid as part of the overall fees, yes.

MR RUSSELL: Of course.

MR MEURS: But they're separately mentioned in the invoice. Correct.

MR RUSSELL: At destination, the exporter here doesn't know actually what the terminal costs are in Australia and that is included, of course in that sense, in the freight rate. In-bound, they are in Australia pretty well across all trades, so they would pay them at the point of destination in Australia, and that's fairly common throughout the world.

The justification goes back really historically. Importers paid sorting and stacking charges direct to the stevedore in conventional days when they actually picked up their goods, and in many ways that CENSA formula tried to separate all the different costs out, and those went to the ship and those went to the shipper, and it was based on old sorting and stacking charges and it ended up at around the 80 per cent.

So they arose in the mid-1980s because of the declining freight revenue and increasing stevedoring costs, so one was going down, the other was going up. The fact was that with containerisation the concept had been, as we mentioned before, to provide a total door-to-door service at, one price. The reality was that these third party costs were increasing to the point it could not be sustained and therefore

worldwide they started to come out as a separate charge. I think the major benefit of terminal handling charges has been their transparency and they have applied pressure, additional pressure, if you like, as far as these costs are concerned because we can see them, we can see them moving. They have gone down with the reduction in those costs.

For example, in 1997 there was a general reduction in stevedoring costs and there was a charge in the tariff from a per TEU to a per container or per lift basis, which meant the 40-foot rates went down dramatically, so terminal handling charges for 40-foot containers reduced by over 30 per cent; that was passed on directly to the shipper in his pocket. So there is a lot of emotion involved with this particular issue which I would suggest has been unfounded if you look at the facts.

Some have argued that the shipping companies have found a way to pass on their costs because it's not related to the freight rate; in other words, the freight rate will move irrespective of these costs which have been separated out. Well, the fact is that the shipper, whether he's an importer or exporter, has one bottom line, has one price and, the margin for the freight rate is smaller where you have THC separated out and still moves up and down than if you don't, so the end price is still market-related. I mean, at the end of the day whether you get the business depends on the end price, whether you show a THC or you don't. That's what I think is a fear, that somehow that end price is bigger because you have terminal handling charges than if you don't, and it is our contention - and borne out by experience - that that is not the case.

DR STEWARDSON: You've given us some figures for dry cargo terminal handling charges. Can you give us some comparable figures for reefer, which I presume has a different rate.

MR RUSSELL: Yes, we'll provide those if you'd like to have those figures.

DR STEWARDSON: Thank you, that would be useful. If you just turn, perhaps, to the legal side of this, as I understand it, the terminal handling charge or the activities that relate to moving containers around within the terminal is indirectly mentioned within S10.14.2 within the context of the door-to-door service. It's indirectly mentioned there because it refers to the terminal as defined by the Controller of Customs which, as I understand it, is in fact a terminal in commonsense terms. So therefore S10.14.2 does explicitly exempt that activity from the Trade Practices Act when it's within the context of a door-to-door service. It doesn't appear that S10.14.2 actually covers that in the exemption. Is that something you'd like to comment on?

MR RUSSELL: You're perfectly correct, S10.14.1, which relates to the outwards trades, or S10.2.1, which relates to the inwards trades, would not cover this exemption but of course it then goes on to 2 and you have to read them together. What (2) says is that if you set a door-to-door rate, then you can collectively set terminal-to-terminal rates and, of course, anything in between. That was the

argument that we did have with the ACCC, the then TPC - Trade Practices Commission - some three years ago, where it was argued that that exemption in S10.22.2 did not extend to the THCs as being an in between rate. Their view was the exemption only related to a pure terminal-to-terminal rate or pure door-to-door rate, not in between.

Prof Crawford of Cambridge University, well-known international trade lawyer and an Australian, gave us very very robust advice that in his view that was not sustainable. For that exemption to apply you have to have the ability to set parts of those rates collectively, therefore in his view the exemption did extend. That advice was made available to the commission and on that basis they did not proceed. I'm not saying they agree with it; I'm just saying they did not proceed.

DR STEWARDSON: Is the definition in S10.14.2 that includes the terminal handling activities by reference to the definition of the Collector of Customs a satisfactory way of including this activity within the exemption from your point of view, or should it be more explicit if it were going to be there?

MR RUSSELL: We had advice actually from Prof Crawford on that. In his view it should be extended to inland depots, for example, if that was relevant. I have to say that in practice - and bear in mind this has been now in existence since 1989 - we haven't had any difficulty with that in particular section but we do believe, though, that the exemption should be clarified.

DR STEWARDSON: For S10.14.1?

MR RUSSELL: And S10.22, which is inward.

DR STEWARDSON: Yes, thank you.

MR MEURS: Can I ask, commissioner, what is the issue of the THCs? Do I understand correctly that if a conference introduces a THC that is being seen as exercising a dominant position? And if an individual non-conference carrier introduces a THC, is it then okay? What is the issue about a THC? Is it the principle - because some people argue the principle of any THC - or is it the introduction of the increase or decrease of a THC by a conference?

DR STEWARDSON: I think there are two issues. One is similar to the intermodal question: are there appropriate justifications for including them in the conference activity? We've had some discussion on that and there does indeed seem to be some technical reason why it is. It makes sense to include them. The other issue that arises is the one that has been raised by other participants in this inquiry and to which you've referred. We really want to ask them ourselves a little more what their view is on that.

MR MEURS: It's more the conference than it is - - -

DR STEWARDSON: Yes.

MR MEURS: If a non-conference carrier doubles his freight rates, nobody will say anything. If the conference doubles its freight rate one way or the other, then there will be an enormous storm. So it is more whether it is a group of companies who takes a concerted action against an individual company rather than the principle of the issue itself - the price of the THC itself.

DR BYRON: But the coverage of Part X says that it's okay for a group of liner shipping companies to take collective action because there are - - -

MR MEURS: Exemptions.

DR BYRON: It's believed that there are good reasons for that but the question is whether those good reasons also relate to collectively renegotiating a terminal handling charge.

MR MEURS: Actually it's collectively renegotiating anything and not necessarily only the terminal handling charges. There are some people who have philosophical objections to THCs which they argue ad infinitum but that has nothing to do with whether it is collectively or individually set.

DR BYRON: But from the point of Part X we're interested in the scope of the exemptions that are given for conferences.

MR MEURS: Okay.

DR BYRON: I'm very conscious of the amount of time. You've really been very very generous with your time. There were a few other questions that we had up our sleeves but I don't think we really can proceed with those now. I was wondering, Mr Russell, if we were to send you a few follow-up questions of clarification by mail, if you could deal with those.

MR RUSSELL: Definitely.

DR BYRON: I would like to thank all of you for being so very generous with your time, especially to cancel your other appointment and to stay. We have appreciated this very very much and I think it's helped us in clarifying those sorts of outstanding issues from the position paper. Thank you very much.

DR BYRON: Mr Zerby, thank you very much for coming. Would you like to introduce yourself for the transcript - and your affiliation.

MR ZERBY: Yes, I really have practically no affiliation. I retired from university, so I do not represent either a shipper or a carrier or a government department or business organisation. It's obvious from the fact that the table's rather bare that I'm sort of alone. I suppose I should say the main reason why I did contribute something. The reason for it is that I did have three and a half years with US government departments - the House of Representatives, Federal Maritime Commission - dealing with shipping acts of the US.

During a period in which I was with the New South Wales University - this was on leave - we academics were supported principally from public funds. I don't know that it's accurate to say that now but it was at that time. So I just felt that I should make myself available for purposes of if there is any clarification regarding the US act, US intentions or just getting general views on things. It was principally for information purposes that I provided the submission and that's the reason for being here. I'm quite happy if you want to proceed with questions. There is perhaps one point arising from the submission, which was quoted and mentioned in the Position Paper I would like to expand on that if I can have 10 minutes perhaps, if that is satisfactory.

DR BYRON: Please.

MR ZERBY: This was the comment that was reported on page 54 of the position paper. The regulatory changes:

> We should avoid regulatory changes that are likely to be incompatible with a possible multilateral system of monitoring and control.

The main reason for wanting to expand on this is that it's mentioned elsewhere in the position paper about the fact that the WTO process will probably take some time, which is true, and no-one can know the outcome, which is also true. It's for this reason that the commission rejected the idea of letting things go until then, which I would agree with. But nevertheless I think that it is possible to give some, shall we say, projections of where things could go and perhaps enough to say likely to go, or at least we can do the reverse and say where they're not likely to go.

I find it hard to imagine that the WTO process would recommend that full exposure be given to conferences for individual governments' trade practices legislation. I think that chaos would reign if they urged that everyone would remove any immunity or exemptions which they currently give and allow full exposure to it. I would think that would be rather chaotic. I think rather what they're likely to do is to suggest some sort of international monitoring - not necessarily control but at least monitoring - for the purpose of determining whether liner shipping on a global basis and on an individual trade basis is becoming more or less competitive over time. To

simply observe things, I think, would be a sensible approach if the WTO did take that.

It is difficult, in my view, to come up with an accurate statement or reasonable statement saying whether existing trades are or are not competitive as a result of the conference system. The last year and a half that I was in Washington with the Federal Maritime Commission was mainly to assist in the review of the Shipping Act of 1984, which was required by law. The FMC was given the task of doing this and they thought it would be useful to have outside independent influence on the way they went about it. The task was largely what you people have, and that is to try to determine the impact of legislation. It was somewhat more restricted than you have since you have a broader, open view of things, but it was largely the same thing - trying to measure whether the 1984 Act improved or did not improve the competitiveness and so forth.

It's extremely difficult to do this. There simply are no accurate quantities which one can look at. The most that could be done is to say yes, it seems to be somewhat more or somewhat less. You can get trends. It is possible to look at trends. I think if there is any sensible approach that the WTO takes, it should be something to try to encourage that on a multilateral basis, which means they would request individual members of the WTO to do their own monitoring and report and compile these together. It's partly for that reason that I think it's worthwhile for us to think of that here.

Now, the reviews of the shipping legislation I did jot down the years. Intervals - seven years between the 1977 to 1984, nine between 1984 and 1993, six with the more recent one including now, the 1993 to 1999, which is reasonable. I think that perhaps compares favourably with most other countries' reviews but the fact is there's still a fair bit of time in between and the task in doing it in these jumps of seven, nine and six years is the fact that it's difficult to get the data for continuity. My view is that one recommended change - it wouldn't have to be legislated but I think one useful thing to do in liner shipping would be a request perhaps to the minister for - it's Department of Transport and Regional Services now. Is that correct?

DR BYRON: Yes, it is.

MR ZERBY: The new name, yes. Things change such that it's sometimes difficult. I still think of it as Department of Transport and Communications, I'm afraid. It will take a while before that changes. They already observe negotiations and I think it would be reasonable to request that a report be written, perhaps on an annual basis, which would look at those very 10 things which you people have highlighted as important. I'm not sure what page that is but I did note 10 items in italics which the commission is seeking - reliability, competitiveness, whether Australian liner operators have been hindered. These 10 things which you've listed are fairly complete - and simply give a report and review each year, as well as compile data, perhaps.

There's no reason why it could not be requested of conferences and the large independent carriers to also provide information with regard to the level of service, whether it has increased or decreased and so forth. The point I'm trying to make is I think we need to have nformation on a continuous basis - it need not be a hearing arrangement but simply submitted and reported, but available to the public and comment invited, and periodically perhaps have reviews. But I think that gives something for the review to concentrate on, instead of starting over and digging out information.

The only other point to make is that I favour the greatest amount of flexibility possible with regard to regulatory control or regulatory actions in liner shipping, and my view is that one main advantage perhaps of the parliamentary system is ministerial discretion, and I can assure you that everyone that I know in Washington, in the House of Representatives that I had contact with, the chairman and the committee, would give their right arm to have that discretion. They haven't got it and they cannot. The system doesn't allow it. The checks and balances preclude that.

The president has some limited powers of intervening in cases where treaties with foreign powers are involved in the foreign affairs arrangements, but that is very limited.

The Federal Maritime Commission has some discretion of course but that also is limited by statute. It's necessary of course because of the appellate court system. The courts insist that the law states what their powers are specifically. So the result is that an enormous amount of effort goes into codifying things as thoroughly and completely as possible and by the time it has done that, the act is generally superseded because things change, and it is extremely expensive. It has some useful functions of public awareness but it is a very expensive way of getting that public awareness. I think it is becoming an anachronism in the US. They feel the impact of the slowness of that procedural process. Most of the regulatory changes that have been made have been made for the purposes of streamlining things, to eliminate the full set of notice and hearings which were originally part of everything they did.

My point is that I think one needs a balance between being specific, which give shippers some assurance - shippers are somewhat concerned about blanket ministerial discretion because they're not sure first who the minister is going to be, and secondly they're not sure that the minister is going to be sympathetic, so there is a fair bit of uncertainty in that. They would like to see it in writing. But I think from the point of view of this review of the legislation, the real balance is not so much between giving exemptions to the conference for the purpose of realising economies of vessel size, which is the main source of the economies - some limited economies of scale and some economies of scope on the one hand - and on the other hand limiting the market power. That is important but I think the most important balance is the balance between codifying things in terms of what is prohibited and what is not and what they have to comply with on the one hand and allowing the ministerial discretion on the other. I think that is a far more delicate balance that has to be achieved.

My view is that when in doubt give more to the ministerial discretion because it is flexible. It can cope with virtually anything that arises whereas codification cannot. Codification necessarily restricts the ministerial discretion, takes it out his hands. He may still have control and influence but it's still not quite discretionary by definition. There was a comment I noticed when I came in about the intermodalism in the US. If that's a pressing issue for you as to why it was that Americans felt it necessary to give immunity for negotiations between conferences and inland carriers, I can provide some of that explanation for you. But perhaps it's better if you proceed with questions you have in the order of their importance.

DR BYRON: Thank you very much. At the outset I meant to congratulate and thank you for your initial submission, both because it was so informative because of your prior experience and, as you say, in a similar type of inquiry and, if I can use the phrase, because you not particularly aligned with any party in this inquiry.

I particularly appreciated the historical perspective that you gave us on this, and also the implications of the derived demand for shipping services, in terms of it's not a normal buyer and seller type of zero-sum gain.

Your comments on globalisation I found particularly interesting, and I would like to take that up with you, particularly as it relates to international conformity.

I would like to follow up the point you just made of intermodalism in the US because that is, as we've said in the position paper, one of the major unresolved issues. Just by way of introduction, the OECD completed a review of international shipping just a month or two ago, and it was interesting that they also came up with a raft of very thorny unresolved issues that looked very similar to ours, and the question of intermodalism was one that they found very difficult to grapple with, and particularly the difference in approach between the US and the European Union.

MR ZERBY: In the case of the US it's important to bear in mind that the treble damages allowable under the Sherman and Clayton Anti-Trust Act is enough scare the daylights out of everyone. The result is that shippers, carriers, everyone, is paranoid about making sure that they do comply, as well as the fact that the Department of Justice has a reputation of cracking a very long whip.

It's also important to know - yes, I'm afraid the accuracy of the dates could be off but I think in the 50s, maybe into the 60s - the rail rates in many areas went through a rate bureau. The purpose of this was to ensure that passenger and freight rates were the same between origin and destination regardless of the route that it took. For example, passengers going to Chicago by of Philadelphia, Pittsburgh, would be paying the same fare as passengers that went to Chicago by way of say Albany, Buffalo. The reason for this was mainly the Buffalo people out of the main line wanted to make sure that New Yorkers could shuffle off there if they wanted to. They were afraid of being cut out. So it was local area - and political influence in local areas was fairly strong.

I think I am correct that in that period conferences were permitted to negotiate collectively as a group with the rate bureaux because it was conference versus conference. The rate bureaus were discontinued - and I do not know what date this

course was dropped - and there was a presumption that conferences could not get anti-trust immunity - not specifically stated anyway - to negotiate collectively with individual lines, individual rail carriers or road carriers. It meant that each individual member had to negotiate separately. In fact in most cases I think one was selected to be the negotiator, and once a rate was achieved with particular carriers, the other ones followed suit, so it was almost a collective, even though it was one individual operating on the basis of the group.

Nevertheless, conferences were still very careful about publishing this as a conference tariff, because it was not collectively agreed upon or they would leave themselves exposed to anti-trust enforcement. So what they wanted was to clarify that uncertainty as to whether they could publish a conference tariff. Even though everyone had the same rate and even though it was not necessarily agreed upon as a group collectively, it still had the same effect as being a collective rate. Looking at it in this way, it's just mainly a small step from what had been the practice but for them it was still a very important one.

Bear in mind also that the right of independent action exists in the US law, so it means that conference members, if they choose to, can adopt another door-to-door rate. But the conference members have for some time said that the inability for them to publish, to advertise and to list a door-to-door rate that applies to the conference is a disadvantage, and I think that was true.

DR STEWARDSON: Can you tell us why?

MR ZERBY: From the point of view of competition with independents that could do that (publish a door-to-door rate). It's not so much that they needed the collective action to negotiate better rates, they needed a joint service to sell to the shippers. That was my interpretation at any rate. In other words, they were saying the playing field for them was no longer level as it was before when they were able to negotiate directly with the rate bureau but it was no longer level when they had to negotiate individually with the inland carriers. That is the most that I can add, but I think that helps explain it a little bit. Do you want to pursue that a little further?

DR STEWARDSON: No, I just wanted to ask a very quick question about another matter that you mentioned. There has been some discussion within our inquiry about whether the penalty provisions of the Trade Practices Act should apply to liner shipping and/or to breaches of their agreements. I take it that you would not be in favour of that because to do that would, I think, require more precise codification moving away from discretion. Is that correct?

MR ZERBY: Yes. There are certain potential activities or behaviours of conferences which I think should be subject to severe penalties, and these are included under other parts of the Trade Practices Act - secondary boycotts and so forth, acts which can cause great harm, whether malicious or not. They could cause damage. I think that's fair enough; I think that's well handled. But I think the Part X aspects argument as to whether the conference negotiated in good faith is something

which interferes with the business activity, but it's difficult to see how, in itself, that causes great harm. No-one is going to be run out of business because of that. The answer to your question is yes, if it can be shown that there are activities which can seriously and materially harm shippers, affect their market share, affect sales over a long or medium-term basis, let's say, yes, then there should be penalties imposed. But if there is no evidence of material injury, I can't see that imposing penalties, because of codification of it, is going to bring about an improvement.

The position paper noted there were not many cases that have come before the ACCC regarding liner shipping. I think that's good, but the tone of this was that this was something wrong, and I think that's placing the emphasis the wrong way. Surely we don't want to have trade practices legislation whereby we measure success by the number of penalties imposed. It should be the other way round. It could well be that things are going well, and that's why they won't bring cases before them. So I think one has to be careful in weighing the extent of the penalties. If there is reason to believe that penalties will improve the situation, fine. But I see no evidence of that. I haven't seen any evidence of it, and I think one should search for it before seriously thinking about making a major change because of the consequences. As I said, you get yourself in a position where everything is so tightly codified that it just becomes an administrative problem, as it has in the US.

I can give you a number of anecdotes. In the period I was there one was the control carrier bill, which was the first experience I had. An enormous amount of time was put into it. It went into effect, and the courts overturned it because we forgot about a little law that existed on the books which virtually nullified the entire act. They changed it subsequently but the inefficiency of the system is quite considerable in terms of the cost of it. The benefits are there but they're somewhat questionable. I don't think you gain anything - that's my point - in the regulation of trade practices by becoming too heavy, unless there are cases where clearly there are serious breaches which cause harm, and that is different.

DR BYRON: That's the argument that has been consistently put to us at this inquiry, that where one can rely on commercial resolution amongst the parties directly concerned, the need to have an interventionist regulator wielding a big stick should be kept for very rare emergencies.

MR ZERBY: I agree entirely.

DR BYRON: That seems like a very compelling argument, I think. Can I come back to seek your impartial expert opinion in terms of globalisation and the way the industry is likely to alter in the future, do you see us moving more towards a sort of hub and spoke transhipment?

MR ZERBY: That part is difficult for me to form an opinion on, largely because I have to admit to being somewhat surprised by the efficiency of the transhipment centres. This partly goes back to the period when I was in Washington, speaking with shippers who had made use of some of the transhipment services. I think it was the Evergreen Line at that time that was fairly active, saying that they didn't like it at all. These are US Gulf shippers who made use of it, and they didn't like it at all simply

because they never knew where the containers were and the information system left a lot to be desired. It was cheaper, they said, and they looked for cheaper rates but, on the other hand, they want certainty; they wanted to know when the container was going to be there.

I can see that the information systems would have improved since then but I am still somewhat surprised that it is as efficient as it is. Possibly it is because, partly at least, with the hub and spoke the multiple port visits are reduced to a minimum and there is time lost with the through service because of the necessity of stopping at various ports. Perhaps that makes a difference, and maybe if that is the source of efficiency, yes, it probably will continue because it means that with increased trade as is certain to occur in volume terms more ships will be needed or more containers will be needed and that means that it will satisfy the criteria of having stops between one port and a main port only for the transhipment, so that the vessel leaving Sydney, for example, does not necessarily go to Melbourne, so there is a direct service to the hub from the individual spokes, as opposed to visits to several ports. That cuts down the transit time considerably, so the answer is, possibly it will.

The biggest difference that I see with globalisation is the fact that large companies are large importers as well as large exporters, simultaneously. I mean, the nature of the trade is such that they have to be that (both importers and exporters) and I think that has had enormous impact. I think it is one of the main reasons for the prevalence of the service contract in US trades because a large percentage of those shippers are in fact major importers or major exporters and they see the advantage of tying things together and there is no doubt it is an advantage to them, but it clearly is discriminatory in the sense that large shippers get an advantage rather than small shippers. That seems to be the way things are going with globalisation. I think we have to look out for little ones because, otherwise, we'll have no big ones when we have no middle-sized ones to grow into big ones, when the big ones decay and finally die off, as frequently they do.

DR STEWARDSON: Yes.

MR ZERBY: But the fact remains that the nature of globalisation will give an advantage to the big operators, the big shippers, exporters and importers.

DR BYRON: That seems to be coming through again in lots of evidence in this inquiry, that the very large actors are quite capable of looking after their own commercial interests and that the regulatory safety net is really to protect the interests of the smaller players.

MR ZERBY: Yes. It was clearly the large shippers in the US that pushed for the service contracts, and mainly the chemical producers, and they were ones for which exporting some of the raw chemicals from the US was a requirement because they weren't available elsewhere. They exported these to subsidiary companies which they had - in Europe, principally - but were also importers of some of the products

that were made in Europe, so it was both-way freighting, but mainly the exports they were looking for. And they did succeed - there is no question - in having lower rates.

At the point under the 1984 Act when the terms and conditions of the service contracts were required to be made public they suffered because they said they expended an enormous amount of time, effort and money to negotiate favourable rates only to find that as soon as they were announced everyone else got it and, as well, in some cases - I think I mentioned this is the submission - some shippers insisted on having so-called favoured shipper contracts, which meant that if at any time they negotiated a more favourable rate with someone else it also applied to them. So that is not only a free ride from the beginning, it is also a free ride in perpetuity, which does make life very easy for shippers but it makes things rather chaotic particularly for the conference carriers. They did stop that, of course, (the "favoured shipper" clauses), but the reason for removing the non-confidentiality clearly is because they wanted to eliminate that free-rider effect.

DR BYRON: My last point is on the international conformity. It seems to me that in Australia, although we may have a legitimate interest in how we would like to see the future regulatory patterns being harmonised or whatever, we're unlikely to have an enormous amount of influence in shaping that and that the rest of the world isn't going to automatically follow a regulatory regime that Australia devises, and we will probably be carried along in the slipstream of what happens in the US, the EU and Japan. I just wanted to clarify the statement you made at the beginning, that you think it is most unlikely that WTO would be able to persuade individual nation states to drop the exemptions, authorisations and Part X types of arrangements that virtually all of them now have in place - the exemptions from antitrust law.

MR ZERBY: That's correct. I take your point about degree of influence, nevertheless I think the degree of influence does not necessarily depend upon stature within groups, it depends partly on having sensible ideas and sensible suggestions. I think it is desirable if any nation has it, sensible ideas and suggestions, to make those available - to think about it and offer it and let it be discussed - rather than sitting back and waiting and reacting. Part of the reason for saying this is, going back to the 1989 amendments to the Trade Practices Act, I did have some discussions with people in the Department of Transport regarding those amendments. It was mentioned to me that there are some similarities to the Act of 1984 and therefore perhaps I could be useful in telling them how to justify it. My opinion was just the reverse; I thought they were crazy to take that route because I felt there is no point in trying to base legislation on what someone else has done four years ago or five years ago because things change too quickly; that one should not look back and try to cover the tracks and say, "That's a good idea. We should have that." It's the other way and one should look ahead and try to say what's needed, what's better for us.

I suppose this is really extending that thought. That encouraged me to make the point that I think it really is a waste of time looking at what other countries have done in the past because they're going to be changing it. It is far better to look at what is desirable for everyone to do in the future and try to get things moving in that

direction. Any discussions at the WTO are going to be about minimising what each nation has to do to conform and it always gets protracted in that way. But if some suggestions for minimal changes can be made that move things in a direction, that I would regard as being constructive, and I would urge that some thought be put into that. Whether it has an impact doesn't matter. The fact is that it is there, there is an initiative taken, and I think that is important.

What I saw in this review process of Part X is trying to pick up what is needed here in the future and to bear in mind not only from the point of view of reporting with regard to existing Part X and its amendments and proposed changes and alternatives but how will this potentially fit in and is this desirable, and what if other nations adopt the same thing, will that be good or will that be bad. So it is extending the horizons beyond our own borders, because globalisation requires that. If we don't do that it is impossible to organise things such as that we maximise the benefit. Rather, it is the reverse: we maximise the chances of increased costs because of failure to conform to it, as East Asia has experienced in the past 18 months.

DR BYRON: That has exhausted my list of questions but I would like to thank you very much for the submission and for coming today and particularly for the excellent suggestion which you have made about the ongoing monitoring rather than just these sort of ad hoc snapshots and periodic evaluations every seven or nine years.

MR ZERBY: I sympathise with what you people have because, as I said, I was part of that same thing. We had two people on the FMC whose task was to look at rates - because we are economists, we have to look at prices - and one, in particular, they nearly had breakdowns because of the task of doing it; tracing the service contracts. It just isn't worth it, and we didn't find out much anyway at the end of it. At the end of all this collection we still couldn't say very much about it. It is better to have things on a fairly continuous basis and, if something appears that is out of line - there is a change in a trend - then focus on it, and you do it at the time, not seven years later. That is mainly the point I am making, yes.

DR BYRON: I think that is a very good point and thank you very much, Mr Zerby.

DR BYRON: All right, let's move straight on. The next presentation will be from the Bureau of Transport Economics and I would like to ask Mr Gentle and Mr Carlson to introduce themselves for the record.

MR GENTLE: Neil Gentle from the Bureau of Transport Economics.

MR CARLSON: Tony Carlson from the Bureau of Transport Economics.

DR BYRON: Thank you very much for coming, gentlemen. I was wondering if you would like to make a brief opening statement of your position on this and particularly we would value any comments, feedback, on our interim position paper.

MR GENTLE: I will pass on to Tony, who is the author of our reliability work, which is the focus of what we have submitted to you.

MR CARLSON: We are here specifically to address the issues you raised about reliability in the issues paper on page 62. Obviously, issues of policy will have to be left to our department colleagues tomorrow but, having said that, I would also like to take a little bit of time later to discuss the globalisation issues that you have raised this morning. I think you are right to try to find out more about reliability because reliability is a most important part of quality of service in liner shipping and perhaps it is even more important than the freight rates themselves, given the nature of the cargo contained inside.

If I can give you an example of that, often freight rates are compared to the value of the goods inside the container. That is perhaps a little bit inappropriate in liner shipping because you could have a container full of $1 parts that are used to produce motor cars in Geelong, for example, but if that container doesn't arrive on time we could be seeing huge production costs in loss of production.

The other important quality of service aspect of course is frequency of service and this is just textbook stuff, but it also includes the capacity in travel time and for Australian exporters reefer capacity is also a critical quality of service issue. There really isn't much to add about the reliability issue in that we know of no real study that looks at this issue in a conclusive manner. One of the problems is the data problems again. In our letter we have outlined a lot of the issues; reliability and the schedules themselves are issues, and also whose perspective we're looking at is also important because for some Australian exporters a day early may be a problem for them just as much as a day late.

DR BYRON: I also understand that some of the attempts to compare actual times with advertised times ran into trouble when some lines specified very tightly in their advertised terms and may have therefore failed to meet them. Others which had very loose targets had very high compliance rates.

MR CARLSON: It was our experience that the conference operators had tighter schedules and the non-conference had looser schedules. For example, the conference would say one day at one port whereas the non-conference would say two days at that port.

MR GENTLE: So then you get the result that the one with the loose schedules comes up being very reliable but it is a different sort of service that they're advertising. I guess the other thing is that - let's say in the airline industry - there is a standard that if it departs within 15 minutes it is considered on time but, as far we're aware, there is no standard in liner shipping, although I think people seem to think if it is within one day it seems to be okay, but I don't think anything has been done to actually consult with importers and exporters about their views on it.

DR BYRON: Again there may be a great variety amongst shippers in terms of things which are time critical and those which aren't - perishables and non-perishables.

MR GENTLE: Yes. The fact that you see some importers leave their cargo on the wharf for three days to get the maximum free storage seems to indicate that three days for them is probably quite okay - three days' delay wouldn't matter.

MR CARLSON: There is also a question about what time do you take the schedule to be; for example, four weeks out of a port - that is just an indication of when the ship may be arriving at the port, and they may start to get more detailed in their planning a lot closer; say two weeks out. For example, unpublished work by the bureau about 10 years ago showed that four weeks out was extremely unreliable, but within two weeks the schedules became a lot more reliable, so it depends on which schedule you actually use.

DR BYRON: Do you want to say anything else on that topic?

MR GENTLE: I think that is about it.

DR BYRON: Can we move onto the globalisation one then?

MR CARLSON: Neil and myself did some work on globalisation about five years ago and some of the things confirm some of the comments already raised today. One of the things that is important is actually to define the market itself. You raised issues this morning about the possible lack of competition on the North American route. About 10 years ago perhaps you could say the same thing about the UK route - and Llew could confirm this - and in between that time there were also problems with possible lack of competition on the north Asia route in terms of capacity. The point is that each of these routes is sort of like a market in itself, and although the ships are perhaps the most mobile asset for any company they can't be moved between the trades without cost or simultaneously, so we don't get equilibrium across the whole market.

Also I thought the comments this morning that the supply and demand gap will improve in the future - improve for the shipping lines, that is - is probably a bit optimistic. I say that because the global market itself is driven by the east-west trade, and the lines operating in that market are still driven by increasing market share, and this is resulting in continued increased investment in larger ships, and because maintaining frequency is so important this results in increase in capacity. This leads to a redistribution of the ships that those larger ships replace throughout the rest of the world. Now, it's a question about whether Australian trades would get hand-me-downs from the east-west routes because of our specific requirements, but nevertheless those ships must be registered somewhere around the world and it provides some incentive to enter the Australian trade to utilise those displaced vessels.

Plus, as we've heard this morning already, there's the increased use of transhipment, which adds further capacity to the actual markets themselves, and there are also indicators now that in the future there may be a smaller, faster type of container ship to service either feeder routes or just direct services between short distances in perhaps Asia. There's also a question that we might see the rise of a new generation or type of operator such as Evergreen and Cosco and some of the Koreans that entered the market in the eighties with rapidly increasing capacity.

Even though there's rationalisation in the existing marketplace, that doesn't rule out the possibility of new entrants entering very rapidly. Because the capacity is likely to continue to grow internationally it is unlikely that this would not impact upon Australia. Having said that though, even if the supply and demand gap reduces say for a particular route it may not be the end of the world for us as we know it, and it doesn't say that Part X couldn't work in that environment either, or that any other form of regulation would work better.

Just quickly also on the hub and spokes issue, it's my belief that hub and spokes are unlikely to occur in Australia, particularly because of the nature of the Australian network. Most of our containers' origin and destination are within 50 kilometres of each of our major ports. We have a very limited amount of containers moving between major centres in this country on the land transport side. If you do try and introduce a hub and spokes system in Australia - say for example a hub port in Melbourne - the more containers you move on a train out of Melbourne to the major destinations means you have empty containers coming back or empty freight capacity coming back. It provides the incentive to fill those empty trains, providing incentive to actually visit the port that that train went to.

DR BYRON: Yes, one of my colleagues working on an inquiry into rail reform has made comments about the relatively small amount of intermodal transport of containers, but whether it's a function of the efficiency of the rail services or whether it's geography - that most of Australian cities are located at coastal ports - is probably a moot point.

MR CARLSON: It's a bit of both, I'd imagine. The economics of shipping are such that if you're going past the port it's pretty cheap to stop into the port as long as the port is reasonably reliable.

MR GENTLE: It's probably cheaper than carrying the containers on the train.

DR BYRON: Yes, from the figures that I've seen for costs of containers on the train I would think so. The other point related to hub and spoke is, I think Keith suggested that there's a physical limit to the size of vessel that could get into a port like Melbourne. Mr Gentle, yes, Melbourne is probably 28, 29 hundred, something like that.

MR CARLSON: I think there's draft. If you wanted to get to the really big ones, it would be the crane capacity to reach out to the post-Panamax ships if you really wanted to get that big.

DR BYRON: We're unlikely to have a Singapore within Australia.

MR CARLSON: Not for a very long time.

DR STEWARDSON: Transparency of the agreements is something that's been raised with us. Now, you monitor, analyse them, or your organisation does to an extent and has given us some information. To what extent is that public in a digestible form for people in general who say to us that the contents of the agreements are not very visible?

MR GENTLE: I think you'd need to ask the Department of Transport people tomorrow. In the bureau we don't see those agreements.

MR CARLSON: The registrars at liner shipping are the ones who look after them; certainly I've never seen them.

DR STEWARDSON: You could.

MR CARLSON: I don't know whether we could.

DR STEWARDSON: They're public. I thought you in fact were basing some of your information - not today but other information - on analysis of them. I'm obviously wrong.

MR CARLSON: No, they have always been in confidence to us.

MR GENTLE: We haven't looked at the agreements at all.

MR CARLSON: However, the bureau does have a monitoring role to some extent of the maritime industry more than any other sector in the transport sector and we're always happy to monitor more things.

DR BYRON: I should have said at the outset thank you very much for the extremely valuable data that has been provided to the inquiry already. One of the things that we've found in trying to assemble our own data sets is that the numbers are pretty useless without the definitions and we really need the clarity. We've been trying to get price trends but it's not always clear whether we're looking at public prices, list prices, file prices, or actual prices, or worse still, some mix of all of those things. In the position paper we've used graphs that show conference and non-conference and yet does that mean conference in the strict sense or does it mean conference including consortia and discussion agreements and trade facilitation agreements? I don't have a specific question but it's just that I've got these sort of nagging doubts in the back of my mind about how confident we can be that we've used consistent definitions and that the numbers actually mean what we think they mean?

MR GENTLE: This is in the data that we've given you?

DR BYRON: Yes.

MR GENTLE: The definitions we used for conference and non-conference are those used by the department. I think when ships are being allocated to conference and non-conference, we've based that on what the maritime division of the department provides to us, from the liner shipping sheets. So that's how we base our definitions for the data we provided to you.

DR BYRON: But if the registrar is including as conference everything that Part X calls a conference, it's not the same conference that LSS is talking about.

MR CARLSON: That's correct.

MR GENTLE: Yes.

DR BYRON: Okay, I just wanted to clarify that. I'm wondering if I can tempt you to make any comment about the intermodal or the land based transport. We've said in the position paper it's one of the areas we're still grappling with, whether or not conferences collectively should be exempt from Trade Practices when negotiating with land transport carriers.

MR GENTLE: I think we'd have to refer that question to the policy people.

MR CARLSON: Though having heard the discussion this morning it actually raised more questions in my mind than answers. Some of the things that were said didn't ring true to what I understand to be actually happening - the result would be in

the actual marketplace - so we might actually put our heads together for that and get back to you on that if you like.

DR STEWARDSON: I think if you have queries about that, having trailed your coat in that way, you should come back to us, please.

DR BYRON: Yes, okay, it was worth a try. Thank you both very much for coming and we appreciate all the help you've given us already, and any more that you might be able to give in the future for the balance of the inquiry. Thank you.

DR BYRON: In view of the time - we seem to have caught up - I propose to invite Mr Russell of LSS to come back and hopefully we can carry on with our list of questions and that will avoid having to do it by mail later on, if that's satisfactory. I don't want to take up too much more of everybody's time, but if we can maybe go through till about 1 o'clock we'll try and finish off the loose ends. Thank you very much for agreeing to this, even without your colleagues. The next part on my list of questions was going to relate to the treatment of importers under Part X in relation to conferences. Dr Stewardson, if you could lead off on that, please.

DR STEWARDSON: Yes. Mr Russell, first of all just to confirm, inward conferences don't have to be registered now. Correct?

MR RUSSELL: Correct.

DR STEWARDSON: They would have to be to allow importers to negotiate with those inward conferences. Also correct?

MR RUSSELL: Yes, that's an interesting one. There would have to be some concept of membership for them to know who to negotiate with in that sense; whether it would require a full registration, but it would certainly need some knowledge of who were members of inward agreements and who weren't.

DR STEWARDSON: I guess your answer really then leads on to the next question. You've suggested that your organisation would have no problem with importers being allowed to negotiate in respect of the Australian land based component.

MR RUSSELL: Yes.

DR STEWARDSON: You've given us reasons why you think it would be difficult to do it in respect of the sea based component or the overseas based component, but can we just look at how that would work in practice. It would, I take it, as you've just said, mean a registration of an inward conference in order that that conference would then be under the obligation to negotiate with the importers. Now, that being the case, your organisation sees no problem with doing that?

MR RUSSELL: No, we don't, commissioner, see any problem with it. Actually in most cases the outward and inward membership are very similar, or exactly the same in terms of member lines. In some it is really a change of name. It's more than that, of course, in impact, but I'm just saying in terms of membership they are very similar. Every carrier under Part X, whether he's independent or a member of an agreement, of course has to register an agent in Australia, and it would be, I would have thought, through that mechanism fairly easy to have a register of the membership of those inward agreements to clarify if there was any difference. But as I said, it's actually by far the exception. Many of the outwards agreement members are in fact exactly the same on the inward.

One major exception though that does come to mind is South-East Asia where the discussion agreement is purely relating to the outwards trade, and I do not believe at this point there is any inward conference operating into Australia. Basically the point I'm making is I think it would depend on the extent of the registration to how difficult it would be. For example, if you require all the inward agreements to be registered, I think you're raising jurisdictional problems.

DR STEWARDSON: Even if what was then subsequently going to be negotiated only related to land based Australian activities?

MR RUSSELL: Even more so, yes. As to that point, that's right, it's highly doubtful the agreements actually would have much detail in them in relation to those land-based charges in Australia.

DR STEWARDSON: Presumably the importers could only negotiate, if this situation were to arise, on things like the terminal handling charges, because I presume it would be impractical to negotiate service in terms of range of ports covered in that; that would be something that was determined by the arrangement at the other end of leaving the water. Is that correct?

MR RUSSELL: Yes, that's correct.

DR STEWARDSON: Would it be your view that this would be a worthwhile thing for importers to be able to do, particularly if it is primarily related to terminal handling charges? You have suggested that while there is discretion to an extent that they are based on costs that your members in turn receive from others. Would it be a worthwhile thing for importers if it only related to the Australian land based charges, particularly if it were only in the terminal and not intermodal?

MR RUSSELL: There are also port service charges, terminal handling charges, and of course we would assume inland transport. We think it would be useful for importers, and I do think equally the importers need to be represented nationally. In other words, importer groups tend to be state based, where they do exist at all, in fairly loose organisations, so sort of counter to the registration, if you like, to have someone to negotiate with, there needs to be clearly, I would suggest, a designated importer body that was representative nationally. On that basis there would be a considerable advantage in terms of being able to explain in detail what the charges are, and to get feedback from them, and I think to remove - for example, in the terminal handling charge case - some of the objections which could not be argued in fact.

For example, there was an argument the terminal handling charges caused the prices in shops to go up, that it affected Australia's exchange rate. Those sort of arguments I think could be well dismissed in that sort of forum. We offered informally to meet with importer groups - or any importers actually - and that invitation was never taken up.

DR STEWARDSON: So have we.

MR RUSSELL: So maybe with a more formal structure it would actually encourage those groups to sit down with the carriers and consult on these issues.

DR STEWARDSON: Thank you.
DR BYRON: Again, would you agree that the larger importers are quite capable of negotiating their own terms and conditions, either with the conference or with an independent, and it's really the smaller importers who I guess we're not hearing very much from.

MR RUSSELL: Yes, I think definitely the larger importers are well able to take care of themselves in that respect. I think in a lot of these areas, as with the Australian Peak Shippers Association, the exporter side, it is the small to medium-sized exporters or enterprises that probably require the most protection.
DR BYRON: Can you give us any feel for how common it is for importers to purchase goods overseas on an FOB or ex-warehouse basis and why they would want to do that. I guess I'm leading on to the question of if an Australian importer bought the goods ex-warehouse and then arranged the shipping from the other end, they would presumably come under the jurisdiction of that country, so would they need to be concerned about anything other than Australian terminal handling and possible intermodal charges?

MR RUSSELL: The question of terms of trade has been raised over many years as being the foundation for regulation of this industry globally, and it has always been found wanting. There are a number of reasons for that, and one of them is that of course it changes from time to time - or it can even change from transaction to transaction theoretically. I don't have figures on the percentage at the moment but having read that comment in the position paper I checked with lines in various trades and certainly they hadn't noticed any major change in the arrangements over the last few years, any shift towards greater CIF buying, if you like, or FOB as far as the importers are concerned. Even within one importer group you have different policies and different markets. Someone mentioned Coles Myer. The major retailers sometimes buy FOB, sometimes buy CIF. I think it varies between markets and in between types of lines of product.
DR BYRON: Presumably they think they can negotiate better shipping rates than the manufacturer in the other country would have negotiated on their behalf.

MR RUSSELL: It could be. In other cases it may be the opposite. As far as I'm aware it is quite a mixture. People do talk about half and half as an extremely rough idea but I think it is a question, particularly in jurisdiction, of a general convention - it's certainly not written anywhere - that countries regulate their outwards trade but they claim jurisdiction over both. Both Europe and America claim jurisdiction over outward and inward but they tend to emphasise their regulation on the outward side of it to provide some compatibility worldwide, and uniformity. And of course terms of trade arguments don't match that type of approach because you would have a mixture.

Equally it would be saying to APSA, the Australian Peak Shippers Association, "Some of your members are selling FOB, therefore we shouldn't be negotiating rates with them." It really is not a workable solution to look at terms of trade. However, in terms of the inward - for example, port service charges, or terminal landing charges - they tend to be paid almost universally by the importer. So even in the export trades the exporter here doesn't pay them, and therefore there is a stronger argument to negotiate those arrangements in the country concerned.

DR BYRON: You don't have anything else to ask about importers at the moment?

DR STEWARDSON: No, thank you.

DR BYRON: Carry on.

DR STEWARDSON: If we can just look briefly at the matter of transparency which has been raised by various respondents, can you just outline for us what items in the agreement are in fact made confidential and therefore not accessible to the person who goes and pays his $30 or whatever it is to the registrar?

MR RUSSELL: Commissioner, it primarily solely relates to commercially negotiated rates, and I mean slot costs and actual slot numbers between individual companies. So we claim confidentiality and generally have been successful in it in relation to those areas that impact directly and immediately on the commercial arrangements for an individual carrier.

DR STEWARDSON: So it's primarily the transfer price for the interslotting arrangements as between members of the conference.

MR RUSSELL: And the number of slots.

DR STEWARDSON: And the number of slots. Thank you.

MR RUSSELL: Some of these, if known - as we put in our application - generally, could impact on the marketing efforts of that individual carrier, because if it was known that he only had a very small number of slots and he was trying to market against a bigger carrier, he would be considerably disadvantaged. It's only in those areas that we claim. All other aspects of the agreements are public.

DR STEWARDSON: The maximum price that the conference will charge is something that is not a confidential bit of information there.

MR RUSSELL: No, they're not usually included in their conference agreements as such, but they are a publicly available tariff. People can get hold of them. That would be for the public - you know, a very small exporter - and perhaps the individual exporter would come in and want to see a public tariff list; there's one available.

DR STEWARDSON: From your organisation or from shipping lines?

MR RUSSELL: From our organisation - well, both.

DR STEWARDSON: How does that in fact work in respect of the fact that different commodities may be charged different rates? Are there a series of maximum tariffs or just the one?

MR RUSSELL: There is a public tariff and then behind that there are contract rates and then specific rates for specific arrangements, maybe with the individual shippers. But the public one is set out, and it does have a range of rates usually based on commodities or bands.

DR STEWARDSON: So you may have a number of these maximum rates, one for one group of commodities, another for another group of commodities.

MR RUSSELL: Yes, not that they're often used these days.

DR STEWARDSON: No, I understand. It was just a fact for clarification.

DR BYRON: With regard to the terminal handling charges, in the table that was in the appendix to your supplementary submission the figures show the THCs at a number of ports by different sources - origins of cargo. I guess I was a little bit surprised that there was such variation between sources. I would have thought the cost to move a box around a terminal would be the same irrespective of where that box came from. Can you just explain to me why the THC for a container that's come from South-East Asia is 20 or 25 per cent cheaper than the terminal charges for a box that's come from somewhere else.

MR RUSSELL: I should add that there are some differences from what we have given you and the current terminal handling charges. We can update that list but I'll just mention that I don't think South-East Asia is the cheapest now. But there are a number of reasons. First of all it relates to the size of the vessel and the handling of the vessel. In other words, these are negotiated contracts between groups, consortium or individual carriers and the stevedores, and there's a whole range of issues go into those negotiations including, for example, what services are required under that contract. Some may be more extensive than others. Volume is obviously a big factor. That is one of the reasons why the national coverage is important in stevedoring.

One of the problems that new stevedoring companies face in trying to set up an individual port is that really shipowners require a rate right round for all the ports. But it's a volume issue. If, for example, in dealing with a couple of the major stevedores you start to take volume out because you've contracted with a smaller stevedore in one port, then obviously you'll pay a larger price for the rest of Australia. Can I just add two points on transparency. One is that under the agreements the minimum service levels of course have number of sailings and ports, and total capacity, including split between dry and reefer. That is always made public. I think

that's very useful for shippers looking at an agreement to find out what is the minimum commitment to services provided. It includes even the provision of containers in good condition. All those commitments are there in the minimum service levels. I think that is a transparent aspect.

Secondly, just on the question of intermodalism, you mentioned before the question of collectively negotiating. I think when looking at intermodalism one has to separate price-setting and negotiation, if you like, at the land base level. There are two different issues. Exemption really under Part X relates to the price. As mentioned before, in putting together that price we might have a range and then often the case is, adopt the low price. Each carrier comes up with a price because he's doing the negotiations. They're not collective negotiations. They're not talking about ocean carriers getting together and going to one trucking company and saying, "What's your best rate?" Whether that should develop or not is another issue but I'm just saying it hasn't developed to date.

In looking at the issue one has to separate those two issues because obviously there's an anticompetitive element, if you like, in actually purchasing bulk services - in other words with a substantial amount of volume - or there's the issue of having a collective and agreed price that's applied by all carriers irrespective of actually what they're paying.

DR BYRON: I guess the way I was thinking about that is that it's hard to argue that there's a great national benefit in a group of shipping lines screwing a few dollars out of Australian trucking companies, even if the full amount is subsequently passed back to Australian exporters. At very best it's merely a redistributional issue - from truckers to shippers. No other group is given that sort of privilege. The fact that the "privilege" comes from the fact that there is justification with regard to the ocean part of it seems to be irrelevant there. I accept the clarification of what you've just said. That puts a slightly different slant on it.

DR STEWARDSON: Can I just for clarification ask how that works. If shipping line number 1 is proved to have got the best deal for the intermodal section, when it's actually shipping line 1's ship that has come in and that line has been carrying, on an inter-slot basis, cargoes for other shipping companies, I can see that it's reasonably straightforward that shipping line 1 can then simply take them on the rest of their journey. But when it's shipping line 2's ship that's come in, what happens then? Does shipping line 1 take over the burden of carriage of the containers for the intermodal section?

MR RUSSELL: Definitely not, no.

DR STEWARDSON: It's shipping line 2 that does it? But does shipping line 2 get the benefit of shipping line 1's price?

MR RUSSELL: Or cost. When you say "the benefit", it may be a lower cost than they're actually paying - this is the cost passed on to the shipper; it is a competitive

element, if you like, if the market has that approach. In fact recently an exercise was done in the American trade for Australia where, for example, cargo from north Queensland will be fed down to Brisbane or to Sydney, depending on which west and east coast service. But in putting those figures together, what was taken was the median. There was actually quite a variation in the rates being paid by the carriers and what was taken was the median, so you could say carrier 1 will gain a bit but carrier 3 will lose.

DR STEWARDSON: And carrier 3 is happy to accept that arrangement? There's the one price offered by all three carriers to the shipper?

MR RUSSELL: That's right, in order to provide that service, and I think that's why I'm sort of concentrating on the price side of it, because I do think it is the shippers - it was the meat shippers who wanted really just a terminal-to-terminal rate from Australia, both as far as Australia is concerned and as far as the US was concerned. They just wanted the lines to provide that terminal-to-terminal rate, in a sense - collective rates but separated out. They wanted separate rates. They wanted to see what the collective land base component was, separate from the terminal-to-terminal rate, so that's what was agreed. I think the carriers are coming at this from providing what the shippers want. It's like the wool shippers in Europe. It's the same thing there. There is a zone around the cities of Bremerhaven or Hamburg, for example, and any mill within that zone will have the same rate. Outside that zone will have a slightly different rate. The carriers carrying that wool will all charge the one rate into that zone and that's what they wanted, if you like.

DR STEWARDSON: Why did they want it? To go back to our example of shipping lines 1, 2 and 3, the wool company that is dealing with shipping line 1 would do better with its rate. Why does that wool company want to agree to pay something more?

MR RUSSELL: I think this is really the heart of the discussion, and that's why we're concentrating on the price: because the wool shipper-exporter wants one price. He's negotiated a freight rate with that group of lines and he's negotiated rates with other individual carriers as well, maybe, and they will have different land based charges, presumably, but with this group he has one contract that relates to freight rate and then he has what they call a decentralised zone charge added to it. He knows that if he ships with any of those carriers it will be the same rate. When he's setting his baremes, for example we've got the auction system. It may change in the future; we've got it at the moment; he may have 15 different costs he has to factor in before he bids for the wool and he wants to reduce that number of factors down to a group he can deal with. It's not as common as it was but it still exists.

There's also linked bills between ports in Australia when actually in the one consignment you're lifting bills linking different ports. So what I'm just saying - and this may be peculiar, to some extent, to the wool industry - is that he prefers that one contract to have, as I said, a relatively small number of costs. The few dollars he may

pay a bit more here or a few dollars he may save there is not as important as having an agreed through-rate.

DR BYRON: A known price rather than the absolute minimum price.

MR RUSSELL: Yes. Well, in some cases it may or may not be the minimum. As I said, there may be some additional costs but, yes, a known price.

DR STEWARDSON: On the question of penalties which you've raised, and the question of whether the penalty provisions of the Trade Practices Act should apply, you point out - and Mr Zerby also would agree - that if they were to apply then there's got to be a more precise definition of what breach it is we're talking about. I wonder if you could just elaborate on this in general. We've had a little bit of discussion about how often breaches occur, and that sort of thing, but perhaps you could fill us in a little bit on that. And the second part of the question is, you've spoken in your submission about the ACCC perhaps being given some right to initiate some action and investigation of breaches. I wonder if you could elaborate on what you mean. Could I just read you two quotations from your submission which seem to me to give slightly different emphasis to precisely what it is you're suggesting the ACCC might be able to do. The one which is on page 6 is:

> Liner Shipping Services would not object to the ACCC having the power to initiate their own formal investigations if it was believed there had been a breach of carriers' obligations under Part X.

The other one, which is on page 13, is:

> The role of the ACCC could be expanded under Part X to include investigation of any issue relating to its operation that causes concern which could be triggered by the commission itself.

In that case it's a matter of what is "its operation"? Are we talking about the agreement or are we talking about Part X itself, which seems to be a slightly wider thing? Could you clarify precisely what it is you're suggesting? I don't know whether you're positively suggesting it but at least you're saying LSS would not be opposed.

MR RUSSELL: I think first of all on the issue of penalties, as we proposed in the 1989 review and again now, we accept that the penalty of withdrawal of a totally blanket exemption from an agreement is a very difficult penalty and may well be not only adverse to the carriers involved but to the trade and the shippers involved. That's one of the issues that since it's formation Part X I suppose has grappled with. There may be cases where, as suggested in the previous review, an undertaking given and accepted by the minister was subsequently breached, and there would be a case for a penalty to apply. In addition, some of the obligations in relation to the designated shipper body - peak shipper body in this case - if they were not adhered to could be again a case for a penalty to apply - a financial penalty. In addition, already

as mentioned by Mr Zerby, section 46 applies - and obviously applies the full penalties under Part VI if that was breached in relation to misuse of market power. So that already applies.

In terms of the actual obligations to shippers, we make the point in the supplementary submission that it should be very clearly defined what those obligations are - more clearly than has been in Part X. For example, under Part X:

> 30 days' notice of any change in negotiable shipping arrangements is required to be given to the peak designated shipper body.

Yet in other parts of Part X:

> Any variations in freight rates are not to be registered.

That was a 1991 amendment because there was then concern that varying conference agreement actually related to any time and freight rate change. We didn't necessarily agree with that interpretation, I might add, but nevertheless the government felt it was substantive enough to require an amendment, which seems to us a little bit of a conflict because the Australian Peak Shippers Association, as a matter of policy, has asked not to be advised of the commercially negotiated freight rates, if you like, between groups, which was one of the tensions very early on in the Australian Shippers Council and really at the end led to its demise - this conflict between group negotiations and individual negotiations.

So what I'm saying is that if a penalty was to apply, it needs to be clear what it relates to and of course it relates to being notified of any general rate increases, giving 30 days' notice; any surcharges, giving 30 days' notice; or the kinds of issues that we negotiate with the peak designated shipper body, need to be defined and the penalties equally need to be appropriate. The question of damages, I think, is a more difficult one. Equally, those damages have to be proved by the shippers but there may be cases there where that would be appropriate. What we have suggested is to apply both may be inappropriate to have a penalty and be subject to damages.

The issue of the ACCC is a separate issue of course and I suppose we were talking about carriers' obligations in both cases. The "its" does refer to Part X, the operation of Part X, and we assumed in that respect that all they would be looking at really would be carriers' obligations, even if it is to provide adequate economic and efficient shipping services under Part X. I mean, that's fairly broad. The obligations on carriers under Part X are broad and varied but it would also extend of course to whether, I suppose, the registrar had inadvertently registered an agreement that hadn't met the criteria set out in Part X. Again we'd sort of noted that under carriers' obligations, I suppose.

So there wasn't anything major in that distinction but at the moment the ACCC can launch an investigation of its own accord if it receives a complaint from either a carrier or a shipper, and has to launch an investigation if required by the minister, and

there's been, I think, only two ministerial directions so far but the ACCC has launched both formal and informal investigations arising from complaints in relation to, what I mentioned before, S10.14 and S10.22. There were even informal inquiries, for example, in relation to some individual agents having introduced documentation fees, but they are not actually being recorded by the ACCC. So they are monitoring because they had a complaint but it is up to the ACCC to decide whether to take on an investigation if they receive a complaint. We are suggesting if that was broadened that would seem commensurate with the general approach of Part X that, if the ACCC had a concern, they could launch an investigation in relation to that concern on their own account.

DR STEWARDSON: Just a small follow-up point. You mentioned in discussing the penalties part needing to have increased precision - obligations if penalties were to be more codified and you mentioned that the shipping lines should have the ability to pursue a penalty against the shippers. What sort of obligation would the shipper have that he might breach - and be pursued?

MR RUSSELL: Under X - I think it's S10(41) - anyway under Part X shippers equally have to provide information reasonably necessary for the negotiations. One of the suggestions for a penalty was the failure by the carriers to provide information reasonably necessary for the negotiations. We would think it would be inequitable if a similar penalty didn't apply to the inability of shippers to provide reasonably necessary information. We weren't suggesting any extension, I don't think, of the obligations under Part X but simple an equitable treatment of penalties with existing obligations.

DR STEWARDSON: Thank you.

DR BYRON: The only other point which also relates back to Mr Zerby's comment before is, is there any evidence that the reason there have been so few actions under Part X is because everything is going fine or is it because people haven't taken action because they thought it was a waste of time, either because there was something flawed about the process or that they thought the penalties were unlikely to be imposed or whatever? Do we have any evidence at all that says the reason that there has been so little complaint is basically because things can be resolved commercially? That's basically the premise that underlies the whole of Part X. If you can get a commercial resolution, don't bring in the regulator.

MR RUSSELL: No, evidence is a hard word, I suppose. Undoubtedly Part X, since its inception in 1966, has worked extremely well in resolving issues commercially rather than seeking government intervention or regulatory intervention. I think the reason is that both parties are aware that, if you had too frequent referral, then in fact Part X was only not working but the whole commercial raison d'etre for it was not being observed. Actually shippers as much as carriers in getting together and consulting and negotiating on various issues are very conscious of that fact and, as I said, I'm not sure one could refer to it as evidence but in terms of looking at the history of its operation over 30 years, Part X has succeeded in that area. Since 1989

when the new amendments came in, which gave a greater role to the then Trade Practices Commission, I think Part X has continued to operate well.

There have been references where in fact both parties, despite every effort, haven't been able to reach agreement - always being said as a last resort. Sometimes even the threat has resolved a particular problem and there have been a couple of cases that I'm aware of where the initial reaction wasn't to the Australian Peak Shippers Association's liking but after subsequent discussions and, if you like, the threat of reference, the matters have been resolved.

Obviously we did make some brief comment on the alternative regulations but, I suppose not surprisingly, we don't see them as being superior in any way to Part X. I just want to make one point in relation to the position paper. It did refer to perhaps the desirability of the ACCC administering Part X rather than the Department of Transport. As I said, we mentioned in our position paper that we didn't support that. We think there needs to be a strong link with overall liner shipping policy as well as national competition policy. We think that's best carried out by whoever is appropriate to have the responsibility for that. All I make reference to there of course is this area of policy was transferred in the early 1970s from the Department of Trade to in fact the Department of Transport. So I just make the comment that if there was some real concern, and I can't see why there should be, but if there was, then one shouldn't miss the opportunity to investigate whether it shouldn't be closely related to trade because at the end of the day Part X and international liner shipping policy is very much related to overseas trade and its facilitation.

DR BYRON: I guess in many parts of the government there is a move away from industry-specific regulators towards the use of the generic ACCC regulator but it could also be argued that Part X gives a balance of roles between transport and ACCC as the policeman who is sort of kept in the wings waiting to be summonsed, and also is the threat of last resort. I guess it's an empirical point, the extent to which the roles of the various agencies are approximately in balance or the balance might be shifted. Thank you for that comment.

DR STEWARDSON: Just one thing to say - to try and draw together a couple of loose ends that we have discussed in the course of the morning, where it would be very useful if you could come back to us. One was on the profit rates that Mr Meurs mentioned and it would be useful if there is any other information on that over a period of time from other of your members. Another is the issue of clarifying the prices underlying those price indexes. A third is if we could have some discussion between your staff and our staff on the percentage of material that is transhipped, because that is an interesting point. I think also indicated in the earlier part of the morning, although maybe we've covered it subsequently, that you might wish to put more to us on the question of intermodalism. Thank you.

MR RUSSELL: Yes, we will come back on those.

DR BYRON: That was a very useful summary. Thank you very much. I would like to thank everybody present for their participation and their very useful comments this morning. It has been extremely helpful. I will now close the hearing. We will resume tomorrow morning in Melbourne and thank you very much again for coming.

AT 1.13 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 29 JULY 1999

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