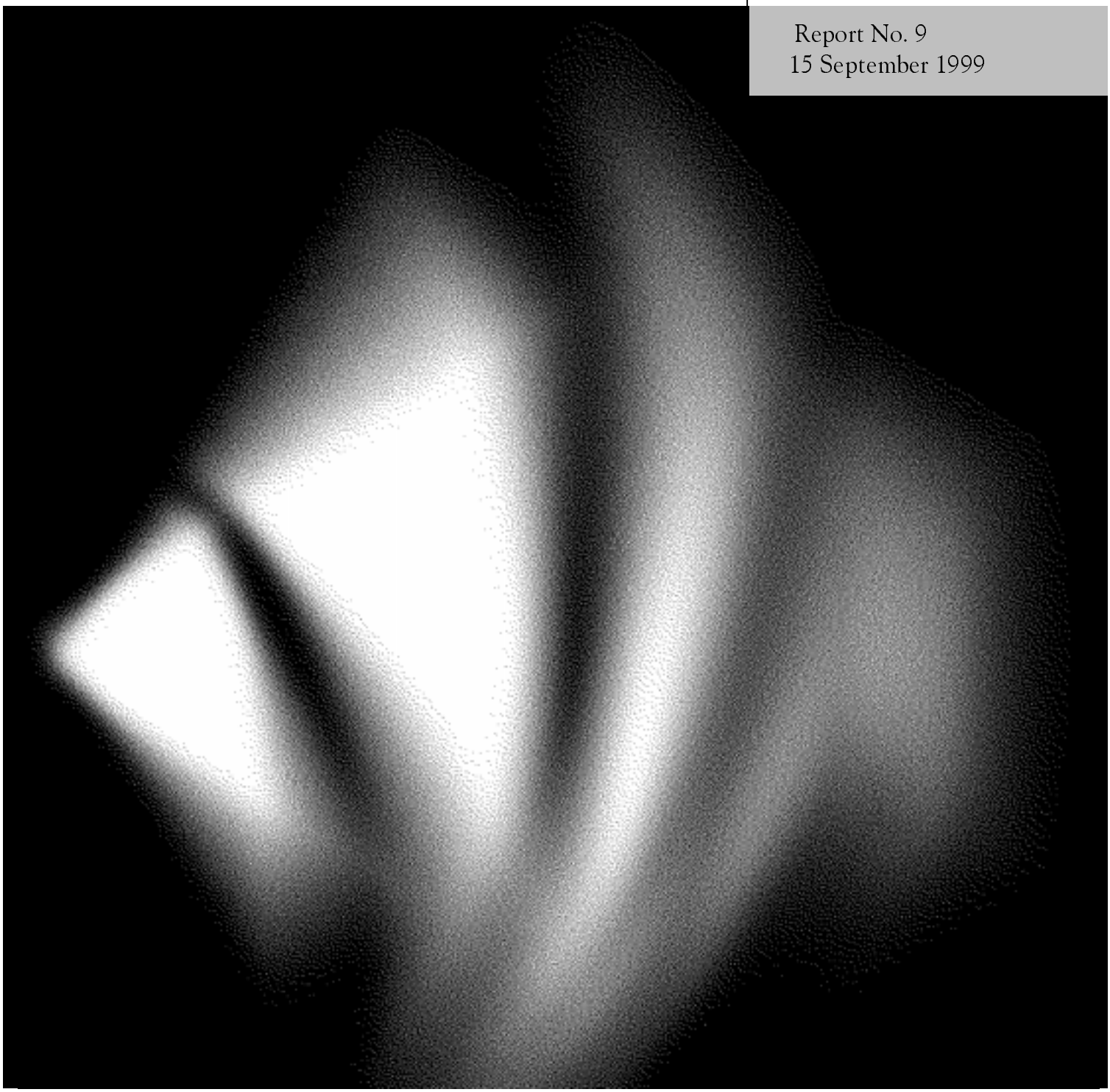
PRODUCTIVITY COMMISSION

International Liner Cargo Shipping: A Review of Part X of the *Trade Practices Act 1974*

Inquiry Report

Report No. 9
15 September 1999



ISBN 1 74037 030 9

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An appropriate citation for this paper is:

Productivity Commission 1999, *International Liner Cargo Shipping: A Review of Part X of the Trade Practices Act 1974*, Report no. 9, AusInfo, Canberra.

The Productivity Commission

The Productivity Commission, an independent Commonwealth agency, is the Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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PRODUCTIVITY COMMISSION

15 September 1999

The Honourable Rod Kemp MP
Assistant Treasurer
Parliament House
CANBERRA ACT 2600

Dear Assistant Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the report on the inquiry into International Liner Cargo Shipping: A Review of Part X of the *Trade Practices Act 1974*.

Yours sincerely

Dr Neil Byron
Presiding Commissioner

Dr Robin Stewardson
Associate Commissioner

Terms of reference

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Government's Legislation Review Schedule, refer Part X of the *Trade Practices Act 1974* and associated regulations to the Productivity Commission for inquiry and report within six months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. Part X of the *Trade Practices Act 1974* is the regulatory regime for international liner cargo shipping operations in Australia. It describes the conditions under which international liner cargo shipping operators are permitted to form conferences to provide joint liner shipping services for Australian exporters and importers.

Scope of Inquiry

3. The Commission is to report on the appropriate arrangements for regulation of international cargo shipping services, taking into account the following objectives:

a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

b) regard should be had to the effects on: the access of Australian exporters to competitively priced international liner cargo shipping services that are of adequate frequency and reliability; public welfare and equity; economic and regional development; consumer interests; the competitiveness of business including small business; and efficient resource allocation; and

c) the Government's commitment to accelerate and strengthen the micro-economic reform process, including through improving the competitiveness of markets, particularly those which provide infrastructure services, in order to improve Australia's economic performance and living standards.

4. In making assessments in relation to matters in paragraph (3), the Commission is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Commission should:

a) identify the rationale for Part X, quantifying issues as far as reasonably practical;

b) assess whether Part X satisfies the rationale identified in (a);

c) identify if, and to what extent, Part X restricts competition;

d) identify relevant alternatives to Part X, including the authorisation processes in Part VII of the *Trade Practices Act 1974* and non-legislative approaches, and the extent to which these would achieve the rationale identified in (a);

e) analyse and, as far as reasonably practical, quantify the benefits, costs, impacts (including with respect to predictability of outcome on the standards of shipping services provided), and cost effectiveness of Part X and the alternatives identified in (d);

f) identify the liner cargo shipping regimes of Australia's major trading partners and determine the compatibility of the alternatives identified in (d), and Part X, with those regimes;

g) identify the different groups likely to be affected by Part X and alternatives identified in (d);

h) list the individuals and groups consulted during the review and outline their views;

i) determine a preferred option for regulation, if any, in light of objectives set out in paragraph (3); and

j) examine possible mechanisms for increasing the overall efficiency of Part X.

5. In undertaking this review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. The Government will consider the Commission's recommendations and its response will be announced as soon as possible after the receipt of the Commission's report.

ROD KEMP
12 MARCH 1999

Contents

Abbreviations and explanations

Abbreviations

AAA	Australia–Asia Alliance Container Consortium
AAX	Asia–Australia Express Container Consortium
ABC	ABC Container Line
ABS	Australian Bureau of Statistics
ACA	Australian Consumers' Association
ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACCLA	Australia–Canada Container Line Association
ACS	Australian Customs Service
ACT	Australian Competition Tribunal
AELA	Australia to Europe Liner Association
ANLCL	ANL Container Line
ANSCON	Australia Northbound Shipping Conference
ANZDL	Australia–New Zealand Direct Line
ANZECS	Australia–New Zealand-Europe Container Service
AOTA	Australia Oversea Transport Association
APL	APL Lines
APSA	Australian Peak Shippers' Association

ASA	Australia–South Asia Container Consortium
ATPR	Australian Trade Practices Report
AUSCLA	Australia–United States Container Line Association
BAF	Bunker adjustment factor
BTCE	Bureau of Transport and Communications Economics
BTE	Bureau of Transport Economics
CAF	Currency adjustment factor
CGM	Compagnie Generale Maritime
cif	Cost insurance freight
CMA	Compagnie Maritime D'Affretement
CP	CP Ships
CPA	Competition Principles Agreement
DCN	Daily Commercial News
DTRS	Department of Transport and Regional Services
EDI	Electronic data interchange
fob	Free on board
FMC	Federal Maritime Commission (United States)
GATS	General Agreement on Trade in Services
H&M	Hull and machinery
IAC	Industries Assistance Commission
IC	Industry Commission
ICSD	International Cargo Statistics Database
IMTL	International Marine Transport Line

LCSA	Liner Cargo Shipping Authority
LLDCN	Lloyd's List Daily Commercial News
LSS	Liner Shipping Services
MISC	Malaysia International Shipping Corporation
MSC	Mediterranean Shipping Company
MTC	Maritime Transport Committee (United States)
NACON	North American Conference
NCP	National Competition Policy
NEC	National Electricity Code
NEM	National Electricity Market
NOL	Neptune Orient Lines Ltd
NVOCC	Non-vessel operating common carrier
OECD	Organisation for Economic Cooperation and Development
PC	Productivity Commission
pers. comm.	Personal communication
P&I	Protection and indemnity
P&O	The Peninsular and Oriental Steam Navigation Company
PSA	Prices Surveillance Authority
PSC	Port service charges
R&M	Repair and maintenance
ro-ro	Roll-on roll-off (vessel)
TEU	Twenty foot equivalent unit
TFG	Trade Facilitation Group

THC	Terminal handling charge
TPA	*Trade Practices Act 1974*
TPC	Trade Practices Commission
trans.	Transcript
sub.	Submission
UASC	United Arab Shipping Company
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organisation

Explanations

Billion	The convention used for a billion is a thousand million (10^9).
Findings	*Findings in the body of the report are paragraphs highlighted using italics, as this is.*
Recommendations	***Recommendations in the body of the report are highlighted using bold italics with an outside border, as this is.***

Glossary

Australian flag shipping operator	An operator who is an Australian citizen or a body corporate incorporated by or under Commonwealth, State or Territory Law who provides shipping services, employing a ship that is registered in Australia.
Accord	An agreement or arrangement between conference and non-conference carriers on a trade route, resulting from discussions on matters of mutual interest such as capacity and freight rates.
Bunker adjustment factor (BAF)	An adjustment in freight rates for fluctuations in bunker (fuel) prices.
Carrier	shipping line
Cartel	An association of competitors that, by agreement, limits the degree of competition that would otherwise prevail in the buying or selling of goods or services by members of the cartel.
Comity	The courtesy by which a nation allows another's laws to be recognised within its territory.
Conference	Defined in Part X as an unincorporated association of two or more ocean carriers carrying on two or more businesses each of which includes, or is proposed to include, the provision of liner cargo shipping services. Conferences may either be 'open' or 'closed'. open conference — involves a legal entitlement for any line to become a conference member, subject to that shipping line satisfying conference requirements. closed conference — where the entry of new shipping lines must be approved by existing conference members.

Consortium	A joint venture by members of a conference signifying a higher degree of cooperation in service arrangements such as the sharing of vessels under a shipping pool.
Currency adjustment factor (CAF)	Factor applied to freight rates to adjust for fluctuations in the exchange rate(s).
Designated peak shipper body	An association representing the interests of Australian exporters generally for the purposes of negotiations under Part X of the *Trade Practices Act 1974*, and so designated by the Minister.
Designated secondary shipper body	The association, designated by the Minister for the purpose of negotiations under Part X, representing the interests of all or any of the following: • Australian shippers in a particular trade; • Australian shippers of particular kinds of goods; • shippers in a particular part of Australia; • producers of goods of a kind exported, or proposed to be exported, from Australia.
Discussion agreement	An agreement between conference and non-conference lines to reach a non-binding consensus over, for example, the charging of common freight rates and a variety of service arrangements.
Extra-territorial	Outside Australia's territorial jurisdiction.
Intermodal	Transport involving transfer between two or more modes to exploit the comparative advantages of each mode.
Landbridging	The movement of containerised cargo between sea ports by road and rail rather than sea, thus enabling more efficient utilisation of containerships.
Liner service	A service prearranged on a particular trade route.
NVOCC	non-vessel operating common carrier (term used in the US *Shipping Act of 1984*).

Port service charge	A land-based charge for statutory port costs that is passed on to the shipper by the shipping line.
Reefer	refrigerated container
Ro-ro	roll-on roll-off vessel
Shipper	The party on whose account goods are consigned (a shipper can be an importer or an exporter, but the 'shipper body' provisions in Part X relate solely to exporters).
Stevedoring	The loading and unloading of ships' cargoes. Generally, stevedoring of container vessels is carried out at a container terminal but general cargo wharves may be used.
Twenty foot equivalent unit (TEU)	The standard ISO container measures 20 feet by 8 feet by 8 feet.
Terminal handling charge (THC)	Container port charge levied by container lines for the service of moving a container from a ship to a position within the container terminal, enabling clearance from the port.
Transhipment	Transfer of cargo from one ship to another at an intermediate port between the port of origin and port of destination.

Key messages

- As an importer of liner cargo shipping services, Australia's national interest is served by obtaining liner shipping services that meet shippers' diverse needs at the lowest-possible price.
- Because transport costs and service levels directly affect their competitiveness, Australian exporters and importers have a direct interest in obtaining the best-possible deal from foreign liner carriers. Thus pursuit of their self interest in relation to liner shipping also serves the national interest.
- Conferences — groupings of liner carriers which coordinate services on individual trade routes — can be an efficient way of meeting an important part of shippers' diverse demands (in terms of frequency, reliability etc). But any form of market cooperation increases the potential for market power.
- The tension between the benefits and potential costs of conference arrangements has led to special treatment of conferences worldwide. Part X of the TPA is an industry-specific, legislated industry code which exempts conferences from some general provisions of the TPA, *provided* they meet certain obligations to Australian exporters and they do not misuse any market power. Exporters also are allowed to form collective buying groups to enhance their negotiating power, backed up by regulatory intervention as they see fit.
- The current regulatory approach has promoted the national interest because Part X allows the efficiencies of conference arrangements while letting competition from non-conference lines and the countervailing power of Australian exporters constrain their potential market power.
- Repeal of Part X in favour of a potentially more interventionist approach under the general (authorisation) provisions in Part VII of the TPA, is unlikely to deliver greater net national benefits. Scope for successful intervention appears limited and, moreover, the general provisions of the TPA are likely to involve greater administrative and compliance costs than Part X.
- While a Part X-type outcome for regulation of liner shipping *could,* in principle, be replicated under Part VII (especially if block authorisation were allowed) or under a special notification procedure, there can be no certainty that these alternatives would, in practice, meet the criteria as well as Part X does. Nor could they be introduced at negligible transitional cost.
- The ultimate test for any regulation or legislation is whether it promotes the national interest and does so more efficiently than alternatives. Part X passes this test.

Overview

This inquiry concerns regulation of international liner cargo shipping …

The Commonwealth Government has asked the Productivity Commission to review Part X of the *Trade Practices Act 1974* (TPA) and report on the appropriate arrangements for regulation of international liner cargo shipping services. Part X describes the conditions under which international liner shipping operators are permitted to cooperate as 'conferences' to provide coordinated shipping services to Australian exporters and importers.

… it stems from the National Competition Policy legislative review program.

This inquiry stems from the Commonwealth, State and Territory Governments agreement of April 1995 — the *Competition Principles Agreement* (CPA) under the National Competition Policy. Under the CPA, Commonwealth and State Governments agreed to review all legislation which restricts competition, by the year 2000.

Regulation should be retained only if the benefits exceed the costs and there is no better option.

In making its assessment, the Commission is required to take into account three objectives:

(a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives … cannot be achieved *more efficiently* by other means [*emphasis added*];

(b) regard should be had to the effects on: the access of Australian exporters to competitively priced international liner cargo shipping services that are of adequate frequency and reliability; public welfare and equity; economic and regional development; consumer interests; the competitiveness of business including small business; and efficient resource allocation; and

(c) the Government's commitment to accelerate and strengthen the micro-economic reform process, including through the competitiveness of markets, particularly those which provide infrastructure services …

Background

Shipping is essential for Australia's international trade.

International shipping is an essential intermediate service input for Australia's merchandise trade. Around 79 per cent of merchandise exports and 71 per cent of merchandise imports (by value) were transported by sea in 1997-98.

Liner ships mainly carry containerised cargo and provide regular, scheduled services.

Liner services are provided by container (including refrigerated container), roll-on roll-off (ro-ro) and conventional and multi-purpose ships, which operate regular, scheduled services to set timetables. In 1997-98, liner services carried 4 per cent of the volume and 48 per cent of the value of Australia's seaborne exports, and 23 per cent of the volume and 74 per cent of the value of Australia's seaborne imports. Bulk shipping services carried the remainder.

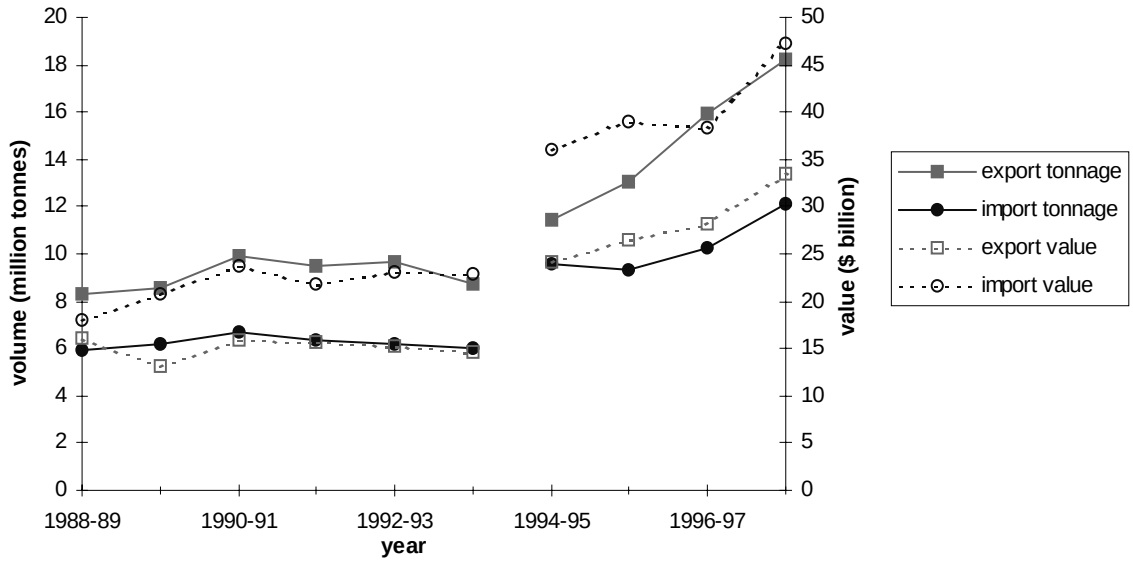
Liner conferences carry more than half of Australia's liner cargo by value.

Conferences, or groupings of liner shipping operators which coordinate services, account for more than half of liner services on major global routes. It is estimated that in the mid-1990s, conferences accounted for around 60 per cent of total global liner capacity. On Australian trades, conferences currently carry more than 50 per cent of liner exports and more than 60 per cent of liner imports by value. However, conference shares in terms of both the volume and value of liner cargoes have fallen since the early 1980s. Non-conference operators providing direct or transhipment services (that is, where containers change ships at an intermediate port) serve the remainder of the market.

Australia is not located on major east–west shipping routes and its liner trade volumes are small by world standards …

Australian liner trades are described as 'long' and 'thin', a product of Australia's relative isolation and the size of its economy. Australia is not located on the major round-the-world or northern hemisphere east–west trade routes — its major trade routes run north–south. Ranked 15th in the world in terms of container movements, the Australian coastal and international liner trade amounted to 2.74 million twenty foot container equivalents (TEU) or only 1.67 per cent of the estimated world container cargo for 1997.

Figure 1 **Trends in Australian liner trade**[a]



a A series break exists in mid-1994.

Figure 2 **Conference shares of the value of Australia's liner exports: key trades**

… *while differences between imports and exports create imbalances in container requirements.*

Australia's major liner exports are commodities (meat, cereals and dairy products), whereas imports are largely manufactured goods (machinery, vehicles and chemicals). Many export cargoes require refrigeration, whereas imports generally do not. Not only do export tonnages exceed import tonnages, but Australia's exports tend to be heavier per unit of volume than its imports. These differences create imbalances in container requirements between inward and outward legs.

Major trade partners for Australian liner exports and imports are East Asia, Europe, Japan and North Asia, New Zealand, North America, and South-East Asia.

Trends in liner shipping markets

International liner shipping is experiencing rapid change …

Global and Australian liner shipping markets have changed significantly since Part X was last reviewed in 1993, continuing a process of change initiated by containerisation in the 1960s. In line with many other industries, liner shipping is becoming more concentrated via mergers and acquisitions, while average vessel size continues to grow as carriers attempt to capture scale economies. Rationalisation is being driven by technological change and intense competition in most trades which has seen freight rates fall significantly in real terms and profitability decline.

… *competition has intensified.*

The trend towards greater industry concentration via mergers and acquisitions does not appear to have reduced competition. On the contrary, it appears the expansion of global shipping companies has increased competition on individual routes — Asian lines have entered the North Atlantic trade, east–west lines are entering north–south markets and the feeder services of large carriers (especially transhippers) are competing with traditional regional lines. Thus conferences compete with each other, with transhipment operators, and with independent direct operators.

Australia's national interest

Australia relies on foreign liner services.

Australia relies almost entirely on foreign shipping lines for international liner cargo shipping services — liner cargo shipping therefore is an essential imported service.

Lower shipping costs increase national income and promote the national interest …

In general, a reduction in the (inward or outward) cost of liner shipping to Australia for a given quality of service, or improved service for a given cost, will increase Australian national income. This is achieved by reducing the cost of imports to Australian consumers and users of importable inputs, and by making Australian exports more competitive in world markets.

… and Australian shippers broadly represent the national interest.

Exporters benefit directly from lower (effective) shipping costs in terms of the price they receive for their exports and/or increased export sales. Importers are able to sell more goods at lower prices to Australian customers. Therefore the interests of Australian shippers (that is, exporters and importers) in obtaining more efficient shipping services broadly coincide with the national interest and, at least in this context, serve as a good proxy for that community-wide interest.

It is difficult to conceive of a situation, in practice, where Australian exporters and importers will not have an interest in obtaining a better deal from liner carriers, or where pursuit of that interest will not translate into national gains.

Role of shipping conferences

Low-cost provision of liner shipping is likely to involve industry concentration …

Liner shipping is characterised by a range of economies of scale and scope suggesting that low-cost supply is likely to require some form of industry integration and hence concentration or cooperation. In principle, this could be achieved by a relatively small number of large global operators.

… and conferences have been the preferred form of cooperation for more than a century.

However, in practice, conferences have been the preferred form of integration in liner shipping markets for over 100 years. Conferences provide a looser form of cooperation than a merged company and usually are trade specific (and may even be limited to one direction on each route). They may engage in joint price setting, capacity rationalisation, revenue and/or cost pooling arrangements, discriminatory pricing structures, and customer loyalty agreements.

In contrast to bulk shipping where each vessel carries one commodity on a charter basis, demand for liner shipping is diverse. The costs of coordinating these diverse demands virtually rule out ship chartering as an efficient form of service delivery. On the other hand, the supply of regular, scheduled liner services provides a means of reducing transactions costs so that shippers with diverse demands are able to access liner shipping services.

Conferences can promote low-cost supply of regular shipping services …

Lower costs of provision of such services require the various economies of scale and scope to be captured. A single shipping line may be loath to commit several large vessels (and incur correspondingly large fixed costs) in order to provide a comprehensive, regular, scheduled service where demand is uncertain and where that uncertainty is exacerbated by the possibility of rivals encroaching on the trade.

Cooperation with potential rivals offers a way of reducing uncertainty, although not eliminating it as liner shipping is contestable. A lower risk premium will mean that larger ships can be utilised and filled to optimal capacity (thus capturing economies of vessel size), while a large conference fleet may generate additional economies while providing the coordinated, frequent scheduling valued by shippers. In this way, conferences can provide an efficient mode of service delivery.

Box 1 **What is a liner shipping conference?**

In conventional usage, a 'conference' is an unincorporated association between two or more companies coordinating services on a specific trade route (either return or one-way). Members seek to rationalise their shipping schedules, arrange the vessel capacity deployed on that route, and to set a common price to charge their customers ('shippers') as a device to coordinate services and minimise commercial risks. They may pool their revenues and costs. They may be 'open' (any shipping line can join or leave the conference at short notice) or 'closed' (membership is by invitation only).

Under Part X of the TPA, a conference is defined as any two or more companies offering shipping services. This therefore includes, in addition to the customary use of the term, consortia, alliances, slot charters, non-vessel operating common carriers (NVOCCs) and discussion agreements (in which the conference and one or more non-conference lines discuss (but do not enter binding agreements on) schedules, port coverage, prices and capacity management).

Not only do all major trading countries permit conferences to operate in carrying cargoes to and from their ports, but each has a system of blanket exemption or immunity from its national competition or anti-monopoly legislation.

… but may give conference members market power.

At the same time, however, conference structures (like a company merger) may give shipping operators a degree of market power.

The key is whether conferences face effective competition.

The key to the impact of conferences in practice is whether they face effective competition or, at least, potential effective competition. Given such competition, conferences will be constrained to charge prices that do not yield excess profits and to operate efficiently over the long run.

Conferences and competition

The alternative to conferences is not perfect competition but other forms of cooperation.

By definition, conferences constrain competition between member lines. But it is highly unlikely that, if conferences (and other cooperative arrangements which are covered by Part X) were prohibited, equivalent levels of (coordinated) service would (or could) be provided by all former conference members operating individually on each trade. It is more likely that, if conferences were proscribed, carriers would merge, thus internalising the conference, or that some lines currently operating within a conference would exit the trade, allowing remaining providers to expand and take a

larger share of the trade. In other words, the economics of liner shipping are such that there will be market cooperation and concentration in some form in order to provide the service currently provided by conferences.

In assessing the extent of competition, the Commission has examined a range of indicators.

Conference shares have declined over the 1990s …

Conference shares of major inward and outward trades have declined over the 1990s, though some trades and commodities have moved against this trend. Conferences carried 64 per cent of Australia's liner imports by value in 1997-98 (compared with 73 per cent in 1989-90) and 56 per cent of liner exports by value in 1997-98 (compared with 73 per cent in 1989-90). On very thin trades (for example, East India–Australia) conference shares currently exceed 70 per cent but have exhibited considerable volatility from year to year.

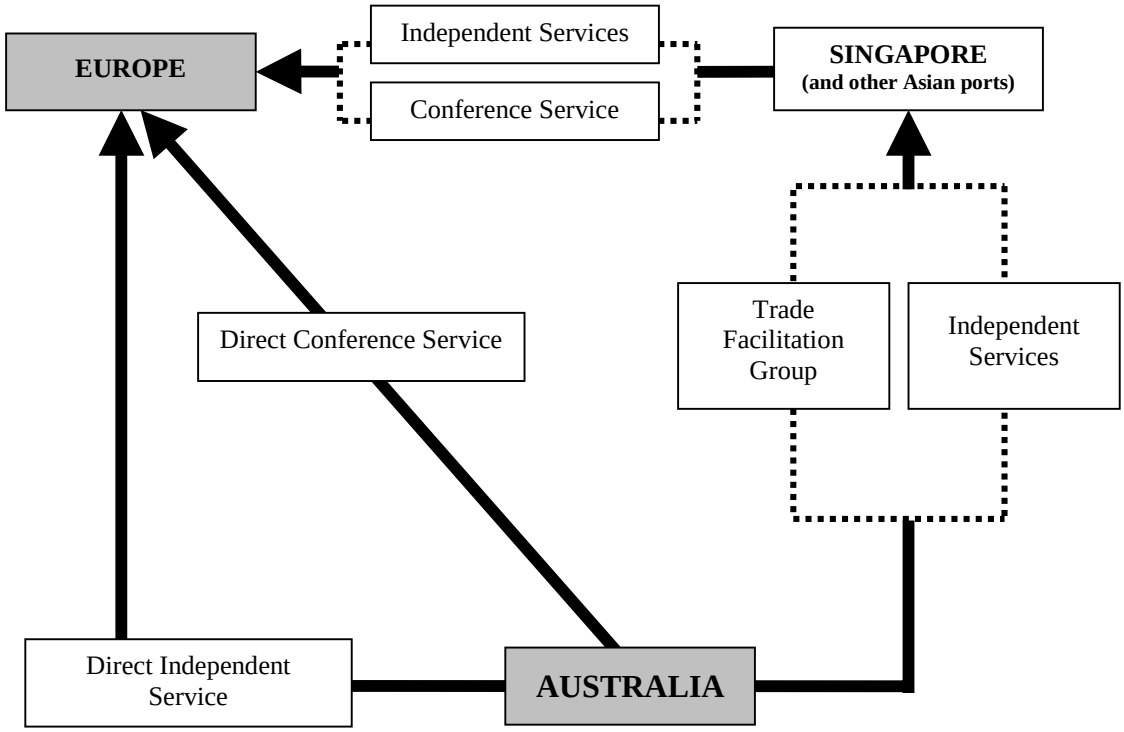
… reflecting the increase in choice available to shippers.

Overall, however, there is no trade route into or out of Australia in which a conference has a monopoly or close to a monopoly — in other words, shippers always have a choice (see figure 3 which illustrates available liner services on the Australia–Europe trade). Increasing trade shares for non-conference operators reflect an improvement in the quality of non-conference services. This improvement has been driven by the emergence of several large global operators in the 1980s and 1990s which provide direct or transhipment services to Australia, usually (though not invariably) choosing to operate outside the conference system — for example, Evergreen Lines, Maersk, COSCO, Hanjin, Fesco and MSC. This development appears consistent with a market that is dynamic and competitive.

Entries and exits on Australian trades also suggest freedom of entry ...

There are other indicators that suggest that Australia's liner trades are contestable and subject to competitive forces. There have been numerous entries and exits on Australian trades during the 1990s, though mergers and takeovers appear to account for major changes in carrier line-up. The comparatively poor profitability of many liner carriers, both on Australian trades and globally, including conference members, also is not suggestive of excess profits.

Figure 3 **Australia–Europe trade: services available in 1999**



Commercial incentives applying to potential new entrants apply equally to individual conference members. Demand by large shippers for individual service contracts has reduced the practice of common rate setting, though common rates continue to apply for some types of cargo.

… and conference members also compete against each other.

The potential for conferences to exercise market power also appears to have been constrained to some degree by countervailing power exercised by Australian exporters. For example, evidence from shippers suggests that scope for collective rate negotiation, and the requirements for shipping operators to negotiate minimum service levels and provide information to shippers, have bolstered their negotiating position. At the same time, individual large shippers increasingly appear to be negotiating directly with shipping lines to their mutual advantage.

Australian exporters also have been able to exert some negotiating clout.

Freight rates have continued to fall steadily over the 1990s …

Freight rates for conference and non-conference liner shipping services on most major Australian trade routes have declined steadily and significantly in nominal and real terms since the early 1990s, continuing a trend evident since the late 1970s. Many participants in this inquiry claimed that freight rates are historically low on major trade routes (see figure 4). While freight rate movements do not of themselves indicate the state of market competition, it appears that aggressive competition has been a driving force.

… while service levels overall have improved.

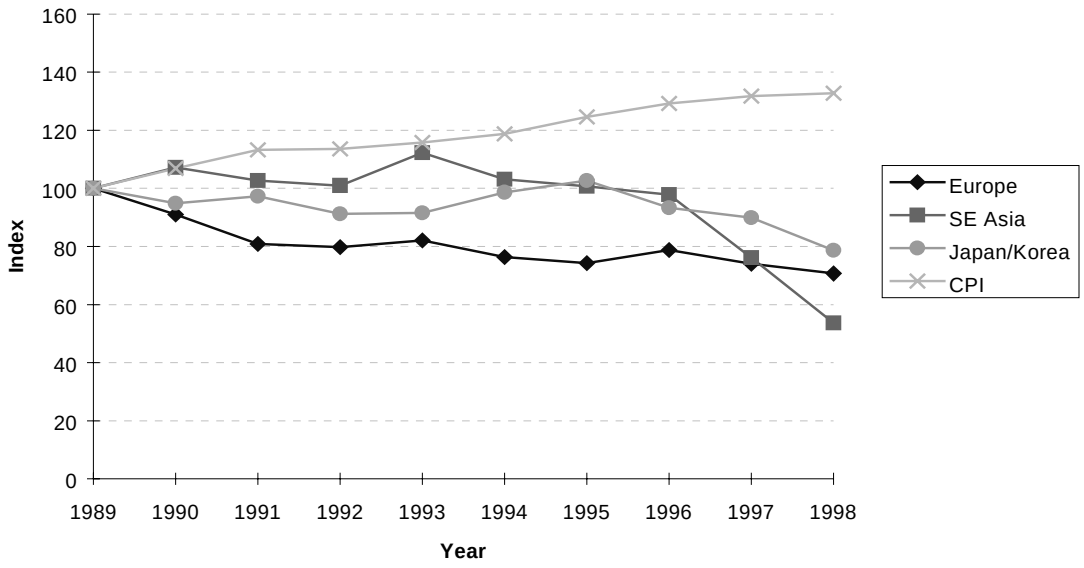
Participants also have claimed that service levels to Australia have improved in recent years. Evidence gathered by the Commission relating to service reliability, capacity, frequency, port coverage and transit times generally supports this assessment.

While the quality of service provided by non-conference operators has improved since the 1993 Brazil Review, conferences as a whole continue to offer a better quality service than individual non-conference lines in terms of their overall frequency of services, reefer and dry capacity and port coverage. The difference between conference and non-conference freight rates has narrowed, though conference services typically continue to attract a premium reflecting the higher level of service provided.

Competition in liner shipping markets is intense, with conferences providing one of a number of service types.

While these and other indicators examined by the Commission are partial and therefore imperfect, the range of evidence available to the Commission consistently suggests that conferences are subject to effective competition from independent operators. Australian shippers claim that they enjoy a wide range of choice regarding service levels and prices, with conferences, on the whole, providing higher quality services. The shipping market in this respect is like many others where a range of differentiated services and goods is available from a variety of production units.

Figure 4 **Trends in freight rates in key northbound trades**



Appropriate regulation

Regulation may promote Australia's countervailing power …

Although market forces appear to have ensured good outcomes for Australian shippers, there are two main reasons for regulation of conferences. First, several conference practices constitute *prima facie* breaches of Part IV of the TPA. Therefore, if conferences are to operate at all, they require some form of exemption or authorisation. Second, and more fundamentally, as an importer of liner shipping services, it is in Australia's interests to exercise countervailing power appropriately. This may be facilitated by legislation or regulation.

The ultimate objective of any regulation must be to enhance the national interest. For this inquiry the national interest is congruent with the interest of Australian shippers in obtaining appropriate quality service at the best-possible price.

… and thus help ensure benefits of conferences are passed on.

If it is accepted that conferences and other cooperative structures which characterise liner shipping services can promote efficiency and service levels, an appropriate regulatory regime will be one that allows such arrangements but which, at the same time, ensures that the efficiency gains and lower costs made possible by such arrangements are shared with Australian shippers and, through them, the Australian public.

To this end, and drawing on the terms of reference for this inquiry and accepted guidelines for good regulation, the Commission considers that a desirable regulatory regime will:

Good regulation will not impede competition, will be compatible with overseas regulation and promote commercial outcomes …

- allow a variety of market arrangements that generate efficient outcomes for Australian shippers;
- minimise adverse impacts on competition;
- promote Australia's bargaining power and provide effective constraints against abuses of market power by conferences;
- involve minimal regulation to achieve desired outcomes;
- be compatible with international regulatory regimes (that is, be workable and enforceable);
- promote predictable outcomes for Australian shippers (in the sense of predictable standards of shipping services provided); and
- involve low compliance and administration costs, and be transparent and flexible.

… and be able to adapt to future developments.

An appropriate regulatory regime also will need to be able to adapt to future developments in international liner shipping markets — including the possibility of a reduction in competition — and introduction of new technologies.

Some participants suggested that the decision regarding appropriate regulation should take into account possible developments in the WTO regarding international rules for liner shipping. However, a global framework is unlikely to be agreed in the next few years and, consequently, the Commission does not consider that the choice of regulatory arrangement should be based on possible developments in the WTO.

Regulatory options

Part X or Part VII of the TPA are the two major regulatory options.

There are two major alternative approaches to regulation of international liner shipping — that currently embodied in Part X of the TPA, and application of the general provisions of the TPA, including Part VII authorisation provisions.

Other options include an industry-specific notification procedure, block authorisation or an industry code.

Part X

Part X exempts liner conferences from some provisions of the TPA …

Part X allows individual shipping firms to enter into cooperative arrangements that otherwise would contravene certain sections of the TPA. To this end, Part X provides registered liner cargo shipping conference agreements (very broadly defined) with exemptions from section 45 and, with the exception of third-line forcing, section 47 of the TPA. These exemptions allow conferences to set joint freight rates, pool earnings and costs, rationalise capacity and restrict new entrants to the agreement (but not the market). Loyalty agreements with customers also are permitted.

… but does not compel formation of conferences or protect them from external competition.

Though the exemptions from the TPA allow shipping lines to enter into conferences and similar arrangements (which *prima facie* restrict competition), it does not compel them to do so. Nor does it constrain liner carriers from entering the market and operating outside the conference, as is the case for most other legislation deemed to restrict competition. In this sense, Part X could be described as taking a permissive stance towards *production* of liner shipping services.

Part X attempts to ensure that Australian shippers benefit from cost savings of conferences by bolstering their negotiating power.

However, Part X does *not* take a permissive approach to the *effects* of cooperative arrangements on Australian exporters. Indeed, the overriding objective of Part X is to promote the interests of Australian exporters (and thus the national interest). Specifically, Part X attempts to promote the negotiating strength (countervailing power) of Australian exporters by:

- allowing (but not requiring) them to form buying groups and *requiring* outward conferences to negotiate with and to provide information to these groups;
- providing for ACCC investigations of breaches of Part X by shipping lines (with scope for full or partial deregistration of conference agreements); and
- not exempting liner shipping operators from application of section 46 of the TPA (which prohibits misuse of market power).

Part X does not contain an explicit public interest test but the public interest is upheld by shippers.

While Part X does not contain an explicit 'public interest' test, in effect, the public interest is monitored and promoted by exporters who have a vested interest in ensuring they obtain the best-possible outcomes. Exporters can request intervention by the regulators — the Minister and the ACCC — at any time they consider that conferences have breached their obligations under Part X, including the requirement that shipping services are 'economic and efficient'. The ACCC also can take independent action under section 46 of the TPA but it has never exercised this option. It also should be noted that Part X has been subject to regular formal scrutiny to assess whether it serves the national interest — in addition to the current public inquiry, it has been reviewed in 1977, 1986 and 1993.

Part VII

The general provisions of the TPA prohibit certain actions such as joint price-setting. If Part X were repealed, the general provisions of the TPA would apply to liner shipping. Conferences and other cooperative arrangements in liner shipping would need to be authorised under Part VII, almost certainly on a case-by-case basis, and demonstrate, *ex ante*, that they would operate in the 'public interest'. To satisfy the ACCC that the public interest would be served, it is possible that conferences would be required to give price or other undertakings (to negotiate with shippers, for example). While authorisation usually is given for a set period, it can be revoked if the ACCC considers that circumstances have changed 'materially'.

Under the general provisions of the TPA, conferences would be illegal unless authorised …

… conferences would have to demonstrate net public benefits on a case-by-case basis.

Other options

Notification as it currently operates is a procedure that allows notification to the ACCC of conduct that may breach section 47 of the TPA. Notification provides immunity from prosecution unless the ACCC decides to review and revoke the notification. To accommodate liner shipping conferences, the TPA would require industry-specific amendment to extend the range of notifiable conduct. In practice, a notification procedure could follow either the Part X or the case-by-case authorisation models.

Other options include notification and an industry code.

An industry code might operate in a similar fashion to Part X but probably would be subject to (possibly block) authorisation under Part VII. An authorised industry code also might codify behaviour to a greater extent than Part X. As with a notification procedure, block authorisation would require amendment of the TPA which could be industry-specific or available to industry generally.

The Commission's assessment

In assessing the regulatory regime most likely to deliver the best outcomes for Australians generally and shippers specifically, the Commission has taken into account a number of factors relevant to liner shipping (see box 2).

Part X is a tailored regulatory regime which has promoted shippers' interests …

The regulatory approach embodied in Part X is tailored to these market characteristics. Part X essentially operates as an industry code, where the market operates relatively free of day-to-day, third-party intervention. Regulators take action in the event that Australian shippers are dissatisfied with the behaviour or performance of conferences. Evidence available to the Commission suggests that this approach has been successful, promoting commercial relationships and dispute resolution and facilitating good service and price outcomes for Australian exporters. Moreover, it has done so at comparatively low administrative cost and has not caused international jurisdictional conflicts.

… though it has been criticised for being too permissive.

That said, however, Part X has been criticised by some participants because it does not impose an explicit 'public interest' test, its range of sanctions against market power is limited to full or partial deregistration of the conference, importers do not receive the same rights as exporters, and the scope of some of the exemptions from the TPA is not precise. A general criticism is that Part X may be too permissive in relation to the formation and conduct of conferences and discussion agreements and that application of the general provisions of the TPA could produce better price and quality outcomes for Australian exporters and importers.

The Commission has explored in some detail how authorisation and other options might operate with respect to liner shipping but any discussion necessarily is hypothetical.

Box 2 **Features of liner shipping**

- Shippers' interests in relation to shipping services coincide with the public interest and shippers as profit-maximisers generally will have a strong incentive to obtain the best-possible service for the lowest-possible price (failure to do so typically will mean lower sales and/or producer prices);
- Australia relies almost entirely on foreign liner services. If participation in the Australian shipping market became relatively costly, foreign carriers (whose assets are highly mobile) could reduce their commitment to Australian trades or even discontinue the conference service;
- Evidence of substantial production economies in liner shipping coupled with the need for regular, coordinated services suggests that cooperation in some form would characterise the industry even if conferences were proscribed;
- Consistent evidence of effective competition in liner shipping markets and low barriers to entry in liner trades suggest that market forces provide, and will continue to provide, effective regulation of conference market power; and
- All countries with which Australia trades currently not only allow the formation of conferences but also provide general, automatic exemptions from competition law. There is no indication that this situation will change in the foreseeable future.

Part VII is likely to involve more direct intervention than Part X …

As noted above, a key difference between Part X and authorisation (Part VII) is that the authorisation mechanism provides greater scope for direct third-party intervention on 'public interest' grounds. Some participants regard this as a major advantage of authorisation. The Commission agrees that promotion of the public interest is paramount. But is third-party intervention likely to enhance that interest? If competitive forces in liner shipping trades were weak, the case for stricter regulation would be strengthened.

… but such intervention may not be necessary or desirable in this industry where the risk of market failure appears low.

However, given the degree of market competition (and market contestability) and the fact that the public interest coincides with the interest of shippers, it is not clear that scope for discretionary third-party intervention is necessary or even desirable. The national interest is vigilantly represented by the shippers themselves, coupled with apparently effective self-regulation by the market. The suggestion that precisely because there is intense competition, conferences could be removed at little cost, is not accepted by the Commission. If conferences survive

competition they must be producing a valued service efficiently.

There also are serious doubts as to whether Australia could enforce its competition laws in the event that authorisation were not granted. Administrative and compliance costs also would appear to be significantly higher under authorisation.

*Though Part VII **could** work in a similar way to Part X, their approaches are fundamentally different.*

It is feasible that the authorisation process *could* function in a similar manner to Part X. Protection of shippers could be achieved by authorising agreements between shipping lines subject to conditions (such as negotiating minimum service levels with a shipper body, and providing advance notice of changes in price and service levels). Carriers also could opt to give the ACCC undertakings regarding protection for shippers. Indeed, the Commission is of the view that, were Part X to be repealed, *eventually* a Part X-type regime (that is, conditional industry-wide block exemption) would re-emerge. The transitional process could be uncertain, protracted and costly, however, and probably would require legislative amendment to allow block authorisation. Indeed, the approach of Part X appears antithetical to the approach of Part VII as the latter currently operates.

Part VII has the advantage of uniformity, but this should not be considered an end in itself.

The Commission notes the argument that liner shipping should not be treated differently from other Australian industries. The Commission is not persuaded by this argument principally because:

- international liner shipping is an imported service for Australia. If Australia, as a comparatively small user of international liner shipping, were to impose comparatively onerous regulatory requirements on (some of) these imports, reducing the profitability of Australian trades relative to other trades, service levels could decline. Doubtless other forms of service would expand to fill the gap in the market, but it is difficult to see why this would promote the national interest if conferences had been providing a service valued by shippers and providing that service efficiently;

- while it is desirable that no industry or sector of the economy is given special favours which may result in resource misallocation, inefficiency or undesirable income transfers, virtually all liner shipping to and from Australia is provided by foreign carriers who use very few Australian resources. The major potential for resource misallocation is if Australian shippers cannot access adequate quality liner shipping at competitive rates; and
- uniformity of regulation is not an end in itself — the ultimate objective must be a regulatory regime which best serves the national interest.

Moreover, and of overriding importance in this case, the Commission's terms of reference direct that the legislation should be retained if, having passed the test of benefits outweighing costs, its object cannot be achieved more efficiently by other means.

Other options also would involve greater uncertainty and transitional costs.

The Commission also has considered other options including notification, a block authorisation and an industry code. With notification, or with an industry code (unless it had block authorisation), there would be an additional level of uncertainty — that is, the uncertainty of not knowing whether, in practice, it would be administered in a manner similar to Part X, or similar to Part VII authorisation. In the event of the latter type of application, the advantages and disadvantages of a Part VII authorisation, as already discussed, would apply.

Even if the Part X-type approach could be replicated in an industry code or notification procedure, at the very least transitional costs would be incurred for no apparent gain. Moreover, liner shipping, in effect, would continue to receive the special treatment that most proponents of change regard as a major reason for repealing Part X.

Part X applies competition principles, albeit in an unusual way.

Unlike other legislation deemed to restrict competition, Part X does not give liner conferences a protected monopoly. Rather it applies competition principles in an unusual way, albeit a way designed to ensure that the interests of Australian shippers, and the community overall, are protected. The Commission's conclusion as to appropriate regulation for this industry is based on an assessment of the past and present operation of liner shipping markets and also how they are likely to develop.

On balance Part X is likely to produce better outcomes for Australian shippers than other options ...

For these reasons, on balance, the Commission considers that the regulatory approach encapsulated in Part X is likely to produce better outcomes for Australian shippers, and hence consumers and the community at large, than Part VII of the TPA, or available alternatives, and do so more efficiently.

… but its operation could be improved at the margin.

That said, the operation of Part X could be improved somewhat, by amendments which clarify the scope of the exemptions from the TPA with regard to land-based activities and which extend the range of sanctions available to the Minister in the event of a breach of an undertaking by a conference. The Commission has set out the appropriate amendments in its recommendations.

Recommendations and findings

The Commission has been asked to report on appropriate regulation for international liner cargo shipping taking into account, inter alia, the objective that regulation/legislation should be retained only if the benefits exceed the costs to the community and if alternatives cannot achieve the objectives of the regulation/legislation more efficiently.

The Commission concludes that, given competition and market contestability, the benefits to Australian shippers (and hence the community overall) of allowing conferences and other cooperative arrangements to operate exceed any costs.

Moreover, given the fact that the interests of Australian shippers are aligned with the national interest, and that they will vigilantly represent their interests, the Commission considers that regulation of conferences under Part X is appropriate.

In particular, Part X:

- ***involves minimal — but adequate — regulation and promotes commercial relationships and commercial dispute resolution;***
- ***is neutral with respect to market arrangements and has not hindered efficient market outcomes or hindered competitive forces in liner shipping markets;***
- ***has supported the negotiating position of Australian shippers and assisted in providing them with predictable service outcomes;***
- ***is compatible with international regulatory regimes; and***
- ***is low cost.***

Repeal of Part X and its replacement by the general provisions of the TPA (as they currently stand and as they have been applied) is unlikely to produce outcomes as good or better than Part X, or do so more efficiently. While the Commission accepts that, in principle, a Part X-type approach could be applied within the general provisions of the TPA, this may require industry-specific legislation (a notification procedure) or possibly general amendment of the TPA (block authorisation). However, inevitably uncertainty would remain as to whether these options would be implemented in the manner of the regulation which the Commission assesses is appropriate, as embodied in Part X.

The Commission therefore concludes that the alternatives would not achieve the objectives of the legislation more efficiently than the current legislation. Accordingly, Part X should be retained.

The Commission also recommends that the situation be re-examined in 2005 to ascertain whether the conclusions of this review are substantially altered as a result of technological or institutional changes in the international liner shipping market.

Other recommendations

In addition, the Commission considers that operation of Part X could be improved by the following amendments:

RECOMMENDATION 8.1A

Clarify that the exemption relating to rate setting extends to land-based charges that normally form part of a 'terminal-to-terminal' shipping contract (that is, one that includes not only the 'blue water' component but also the sorting and stacking of containers within a container terminal). The Commission favours widening the definition of terminal from the present 'within the limits of the wharf as under the Customs Act 1901' to include terminals located within the metropolitan area of port cities.

RECOMMENDATION 8.1B

Confirm existing practice allowing members of shipping conferences to negotiate collectively with stevedores.

RECOMMENDATION 8.2

Delete sections 10.14.2 and 10.22.2 which allow the fixing of door-to-door freight rates for outward and inward liner conferences respectively, recognising that the deletion of these sections will make it necessary for insertion of a clause in sections 10.14.1 and 10.22.1 permitting conferences to set terminal-to-terminal rates.

RECOMMENDATION 8.3

Repeal section 10.05 which prohibits price discrimination in certain circumstances. The Commission considers that the price discrimination provisions of Part X serve no useful purpose and indeed are potentially harmful if they discourage efficient price discrimination. In addition they would be extremely difficult to implement.

RECOMMENDATION 8.4

Add a 'national interest' test, similar to that in section 10.67, to apply to any determination by the Minister in relation to sections 10.45(a)(v) and 10.53. This amendment would ensure that shippers' interests were taken into account explicitly in a Ministerial determination as to whether a conference or non-conference carrier with substantial market power was misusing market power in order to hinder an efficient Australian carrier.

RECOMMENDATION 8.5

Provide for more effective and flexible enforcement of undertakings. The provisions of section 87C of the TPA could serve as a useful model.

Findings

The Commission also examined a range of other issues relating to Part X on which it decided not to recommend amendments to the current legislation:

FINDING 8.1

The issue of whether or not terminal handling charges should be itemised separately in the freight charge is a matter for negotiation between shippers and carriers rather one to be determined within the ambit of Part X.

FINDING 8.2

While accepting the principle that inward shippers should be able to organise in order to exert countervailing power, the Commission considers that imposing registration requirements and obligations on inward conferences equivalent to those imposed on outward conferences would impose some costs, and possibly lead to significant jurisdictional problems, for little benefit. However, the Commission does not consider that importers should be precluded from forming a collective buyer group to negotiate Australian THCs if a cost-effective mechanism can be devised.

FINDING 8.3

Discussion agreements should not be treated differently from other forms of cooperation among carriers. The Commission has not been able to identify clear benefits to offset the costs and difficulties (including problems of definition) that would be created by not allowing discussion agreements the exemptions currently provided under Part X. Safeguards exist to protect shippers against any exploitive practices under discussion agreements.

FINDING 8.4

The current Part X approach, which permits (but does not require) carriers to form closed conferences, offers efficiency gains through the employment of larger vessels and cooperative vessel scheduling. The Commission considers that sufficient competitive pressures exist (notably through internal competitive pressures, the operation of non-conference carriers, the threat of entry, the operation of transhipment carriers, and the countervailing power of shippers) to negate any potential monopoly power of closed conferences.

FINDING 8.5

Division 9 (which relates to declaration of a non-conference carrier with substantial market power) should be retained because, if used judiciously, it does not appear to impose costs on shippers, while offering them additional defences against misuse of market power by any carrier which might come to dominate a particular trade.

FINDING 8.6

The processes for registering conference agreements and variations to these agreements provide important transparency benefits and should be retained. Measures to expedite the registration process are matters for negotiation between shippers and conferences, not for regulation.

FINDING 8.7

Funding for APSA should come from the beneficiaries of its activities, namely Australian shippers.

FINDING 8.8

Regulations governing international liner shipping should be retained in the TPA rather than transferred to a separate shipping Act.

1 Introduction

This chapter provides background to this inquiry and the major issues dealt with in the report. It also outlines how the Commission has approached its task.

1.1 Australia's liner cargo shipping task

Australia's demand for shipping services is a derived demand, stemming from domestic demand for imports and foreign demand for Australian exports. International shipping therefore is an essential intermediate service input for Australia's exports and imports.

Around 79 per cent of merchandise exports and 71 per cent of merchandise imports (by value) were transported by sea in 1997-98. Liner services are provided by container (including refrigerated container), roll-on roll-off (ro-ro), conventional and multi-purpose vessels, and provide regular, scheduled services to set timetables. Liners tend to carry relatively high value/low volume cargoes (see table 1.1), though they may carry relatively low value bulky cargoes as ballast. In 1997-98, liner vessels carried 4 per cent of the volume and 48 per cent of the value of Australia's seaborne exports, and 23 per cent of the volume and 74 per cent of the value of Australia's seaborne imports. Remaining Australian seaborne trade consists of commodities shipped by bulk carriers (for example, grains and minerals) and tankers.

Within the liner trades, shipping conferences (groupings of liner shipping operators — see section 1.2 below) tend to carry more valuable cargoes than non-conference vessels (see table 1.1). Though conferences remain important, currently carrying more than 50 per cent of liner exports by value and more than 60 per cent of liner imports, conference shares of both the volume and value of liner trade have fallen since the early 1980s.

Table 1.1 **Australian sea freight, 1997-98**

	Australian exports			*Australian imports*		
By value	**$ billion**	**% of total by sea**	**% of liner shipping**	**$ billion**	**% of total by sea**	**% of liner shipping**
Total carried by sea	69.6	–	–	64.1	–	–
Bulk shipping	36.1	52	–	16.8	26	–
Liner shipping	33.5	48	–	47.3	74	–
— Conference	18.8	27	56	30.1	47	64
— Non-conference	14.8	21	44	17.3	27	36
By weight	**million tonnes**	**% of total by sea**	**% of liner shipping**	**million tonnes**	**% of total by sea**	**% of liner shipping**
Total carried by sea	427.1	–	–	51.7	–	–
Bulk shipping	408.8	96	–	39.6	77	–
Liner shipping	18.2	4.3	–	12.1	23	–
— Conference	8.1	1.9	45	6.5	13	54
— Non-conference	10.1	2.4	55	5.5	11	46

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

1.2 Liner shipping conferences

The principal reason for regulating international liner shipping is the industry's propensity to form 'conferences'.[1] Conferences are groupings of liner shipping operators which coordinate the supply of shipping services. Currently there are approximately 300 conferences operating worldwide. Each conference tends to limit its activities to one leg of a particular route or trade between two or more countries. Most conferences have fewer than ten members, although some have as many as fifty. Some shipping companies choose to join conferences on all or most of the routes in which they operate. Other companies choose to operate independently in all or most trades.

There is a range of views regarding the rationale for, and effect of, shipping conferences. As outlined in chapter 3 and appendix B, conferences may enhance efficiency by allowing carriers to capture economies of scale and scope which in turn allow them to provide low-cost, reliable, regular, scheduled services to shippers. On the other hand, conference behaviour may be consistent with the actions of producer cartels and, as such, facilitate monopolistic or oligopolistic practices and pricing. In practice, conferences may display desirable and undesirable characteristics simultaneously.

1 Shipping generally is subject to international regulatory codes on matters such as safety and pollution. Conference arrangements, however, exist only for (scheduled) liner shipping.

This tension between the potential benefits and costs of shipping conferences has motivated the special regulatory arrangements which typically apply to conferences worldwide. Thus most countries allow conferences to operate but attempt either to regulate conference behaviour directly (for example, the United States requires conferences to be 'open' to the entry and exit of members) and/or indirectly, by promoting the interests of domestic shippers. Australia exempts liner shipping conferences from the application of some provisions of the *Trade Practices Act 1974* (TPA) while, at the same time, imposing certain obligations on conferences to negotiate minimum service levels as well as provide information to Australian shippers. Australian shippers also are allowed to form buying coalitions. It is this special treatment of international liner shipping within the general Australian competition laws which has prompted this inquiry.

1.3 Background to the current inquiry

The Commonwealth Government has asked the Productivity Commission to review Part X of the TPA and to report on the appropriate arrangements for regulation of international liner cargo shipping services.

This inquiry stems from the Commonwealth, State and Territory Governments' agreement of April 1995 to extend competition policy — the National Competition Policy. One of the agreements implementing National Competition Policy reforms, the *Competition Principles Agreement* (CPA), establishes guiding principles for reviewing legislation that restricts competition (see box 1.1). The terms of reference for this inquiry are drawn from these principles.

There have been three reviews of Part X — in 1977 (the 'Grigor' Report), 1986 and 1993. Recommendations of the industry taskforce's *Review of Australia's Overseas Liner Shipping Legislation* in 1986 formed the basis for amendments enacted in the *Trade Practices (International Liner Cargo Shipping) Amendment Act 1989.* The changes were designed to encourage a more competitive environment whilst permitting exporters and importers continued access to liner conference shipping services.

To this end, the 1989 modifications to Part X:

- reduced the scope of the exemptions conference agreements could obtain from Part IV of the TPA;
- introduced public registration of outward conference agreements;
- introduced a 30-day notice period for variations to services and freight rates for outward trades;

- required negotiation of minimum service levels with shippers in outward trades; and
- provided Part IV exemptions for the designated peak shipper body.

Box 1.1 **Legislation review requirements**

Under the CPA all Australian governments agreed to review and, where appropriate, reform existing legislation that restricts competition by 31 December 2000.

The Commonwealth Government released its review timetable in June 1996. The Legislation Review Schedule nominated 98 separate reviews, and foreshadowed, amongst others, the review of Part X.

In announcing the Review Schedule, the Commonwealth Government also outlined a number of requirements for reviews. In particular, the Government stipulated that each review is to be approached according to clause 5(1) of the CPA which states that:

> The guiding principle is that legislation (including Acts, enactments and Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
>
> a) the benefits of the restriction to the community as a whole outweigh the costs; and
>
> b) the objectives of the legislation can only be achieved by restricting competition.

The CPA also outlines how reviews should be conducted (clause 5(9)). Specifically, a review should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.

The terms of reference for this inquiry are drawn from these broad requirements.

Source: PC (1998c).

An independent review of Part X, known as the *Brazil Review*, was conducted in 1993. This review recommended that Part X be retained in amended form. The proposed amendments were designed to strengthen the protection of exporters (that is, users of outward shipping services), and importers where feasible, and to provide a commercially-oriented procedure to deal with disputes. However, no changes were made to the regulatory regime in response to this review.

As already noted, the current review forms part of the scheduled legislative review process. Many of the issues covered in previous reports have been re-examined with

a view to assessing whether circumstances have changed, or are likely to change, such as to warrant modification of the current regulatory approach to the industry.

1.4 Scope of this inquiry and the Commission's approach

The terms of reference stipulate that the legislation (Part X) should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation cannot be achieved *more efficiently* through other means, including non-legislative approaches. Accordingly, the Commission has applied this test when making its final assessment.

In assessing costs and benefits, the Commission was asked to take into account several objectives, including access of Australian exporters to competitively-priced international liner cargo shipping services that are of adequate frequency and reliability, public welfare and equity, economic and regional development, the competitiveness of business including small business, consumer interests and efficient resource allocation. In conducting the inquiry, as well as referring to the general policy guidelines in the *Productivity Commission Act 1998* (see chapter 3, box 3.2), the Commission also was required to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the CPA (box 1.1).

In most legislative reviews under the CPA, the arrangements under review involve a clear restriction on competition. The current inquiry is somewhat unusual in that it reviews an exemption (Part X) to general competition law allowing individual shipping firms to enter into cooperative arrangements that otherwise would contravene that law (unless specifically authorised). Though the exemption allows shipping lines to enter into conferences and similar arrangements (which reduce competition between members) it does not require them to do so. Nor does it explicitly constrain market entry, as is the case for most other legislation deemed to restrict competition.

In this sense, Part X could be described as taking a comparatively permissive stance towards market structure. However, Part X also puts in place several mechanisms designed to ensure that cost savings generated by conferences are shared with Australian shippers.

The Commission's approach in this inquiry has been to:

- develop principles for regulation of liner shipping operations, based on: an assessment of the public interest; the role of shipping conferences in service

delivery and their potential beneficial and harmful effects; an appreciation of the nature of liner shipping (especially that it is an international industry); and the fact that Australia relies almost entirely on foreign liner shipping services;

- assess market outcomes under current regulatory arrangements, and how Part X has contributed to those outcomes, with a view to establishing strengths and weaknesses of the current approach;
- identify and assess possible alternative mechanisms, most importantly, repeal of Part X and reversion to the general provisions of the TPA, including the Part VII authorisation provisions; and
- recommend the regulatory approach which, on balance, best serves the public interest (and which does so most efficiently).

Report structure

Developments in global and Australian liner shipping markets since the 1993 Brazil Review are outlined in chapter 2. Principles for assessing the various regulatory options are developed in chapter 3. Current regulatory arrangements in Australia and overseas are presented in chapter 4. Chapter 5 contains an evaluation of the quality and competitiveness of liner shipping to and from Australia. The effectiveness of Part X is considered in chapter 6. Major regulatory alternatives to Part X are assessed in chapter 7, while possible modifications to the existing Part X are canvassed in chapter 8. The Commission's overall assessment is presented in chapter 9.

1.5 Conduct of the inquiry

The terms of reference for this inquiry were received on 12 March 1999. The inquiry was to be completed within six months — that is, by 12 September 1999.

As required by the terms of reference, and in line with normal Commission inquiry procedures, the Commission encouraged maximum public participation. Soon after receipt of the terms of reference, advertisements were placed in the national and specialist industry press and a circular was sent to a range of individuals and organisations thought likely to have an interest in the inquiry. An issues paper was released in late March to assist participants in preparing their submissions.

The Commission held informal discussions with organisations, companies and individuals to seek information and to discuss the characteristics of international liner cargo shipping. A list of those visited by the Commission is set out in appendix A.

Twenty-five submissions were received in response to the issues paper (see appendix A). All non-confidential submissions (or non-confidential parts of submissions) were made available on the internet, at Commission and State libraries and from Expo Photo Bition copy centres.

Due to the tight timeframe for the inquiry the Commission released an interim position paper for comment rather than a full draft report. This paper was released on 29 June 1999 and circulated to all interested parties. Fifteen supplementary submissions were received in response to the position paper.

Public hearings were advertised in the national and specialist industry press and held in Sydney on 28 July 1999 and in Melbourne on 29 July 1999. Transcripts of the hearings and all non-confidential supplementary submissions (or non-confidential parts of submissions) were made available on the internet, at Commission and State libraries and from Expo Photo Bition copy centres.

Appendix A provides a list of participants at public hearings, submissions and a summary of participants' views.

Associate Professor Keith Trace of Monash University and Ms Frances Hanks of the University of Melbourne were engaged to assist with technical and legal aspects of the inquiry.

Dr Neil Byron was Presiding Commissioner for this inquiry. Dr Robin Stewardson was Associate Commissioner.

2 Trends in liner shipping

Significant changes have occurred in liner shipping markets since the 1993 Brazil Review. Major trends and developments in the global liner shipping market as well as developments in Australian liner trades are discussed in this chapter. Most of the global trends are mirrored in the Australian context, although the Australian market differs from the international market in several significant ways.

2.1 Global liner shipping market

World seaborne trade recorded its twelfth consecutive annual increase in 1997, reaching a new record high of 4.95 billion tonnes (UNCTAD 1998, p. xiii). Of this total, approximately one third was general cargo, of which about half (that is, 825 million tonnes) was containerised liner cargo. The rate of containerisation of general cargo, and the proportion shipped by liners, is expected to grow to 65–75 per cent by the second decade of the next century. (Hoffmann 1998)

The number of containers shipped globally also has increased steadily in recent years (see table 2.1). In 1997, the number of containers shipped was 163.7 million twenty foot equivalent units (TEU).

Table 2.1 **World container traffic, 1984 to 1997**

Year	*Container traffic (million TEU[a])*	*Percentage increase*	*Year*	*Container traffic (million TEU)*	*Percentage increase*
1984	52.7	15.7	1991	93.6	9.3
1985	55.8	5.8	1992	102.9	9.9
1986	59.4	6.5	1993	113.2	10.0
1987	67.3	13.3	1994	128.3	13.3
1988	73.8	9.7	1995	137.2	6.9
1989	78.5	6.4	1996	147.3	7.4
1990	85.6	9.0	1997	163.7	11.1

a An 8 foot by 8 foot by 20 foot container is 1 TEU.

Sources: Containerisation International Yearbook (various issues, quoted in LSS, sub. 10, p. 8); DTRS (sub. 3, p. 6).

The majority of cargo shipped by liners is traded between the northern hemisphere industrialised regions of Europe, North America and East Asia — the so-called

east–west trades. East–west trades account for around 45 per cent of world liner traffic — north–south trades make up almost 22 per cent and intra-regional trade the remaining 33 per cent. (Hoffmann 1998)

Conferences account for the majority of liner shipping capacity on major global routes. It is estimated that in the mid-1990s conferences accounted for approximately 60 per cent of total liner shipping capacity. This share has fallen markedly since the mid-1970s. For example, at the end of the 1970s the conference share of the Europe–Far-East trade was around 85 per cent compared to 57 per cent in 1990 and around 60 per cent currently. (Meyrick & Associates, sub. 5, p. 16)

Independent carriers have improved their quality of service and now some of the largest container lines operate outside the conference system. Maersk and Evergreen, the world's two largest container shipping lines, operate independently on most trade routes. Several other large container lines — COSCO, Hanjin, Hyundai, Mediterranean Shipping Company (MSC), United Arab Shipping Company (UASC), Yangming and Zim Israel — have built their businesses, and in general continue to operate internationally, as independent carriers. (Meyrick & Associates, sub. 5, p. 18)

Trends in the global liner shipping market

Liner shipping, like other industries, is evolving into a more complex and integrated international industry. Some liner shipping firms are seeking global status through bigger ships, larger fleets and expanded services or through mergers or strategic alliances with other liner shipping firms. (BTCE 1995b, p. 7)

Increased vessel size

The size of container vessels has increased dramatically since the late 1960s and early 1970s (see table 2.2). Whereas the capacity of early container ships was less than 1000 TEU, by 1997 vessels of greater than 4000 TEU capacity accounted for 15 per cent of the world container fleet and orders for vessels with a capacity greater than 4500 TEU comprised almost 60 per cent of container ship orders in that year.

Table 2.2 **Growth in the size of ships in the world container fleet**

Year	*Class or type*	*Capacity (TEU)*
1964–1967[a]	First generation	1 000
1967–1972	Second generation	1 500
1972–1984	Third generation	3 000
1984–1995	Fourth generation	4 500
1995–present	Fifth generation (post-Panamax)	6 000

[a] First generation vessels were first introduced in the Australian market in the late 1960s.

Sources: Trace (1998b, p. 11); Hoffmann (1998, figure 1).

Two factors contributing to the increase in the size of container ships are the increase in worldwide demand for liner shipping and the existence of economies of vessel size — see box 2.1 for a discussion of the latter. As yet, neither diseconomies of vessel size nor constraints on the use of large vessels, such as the inadequacy of land-based infrastructure to handle ships over a certain size and the cost of widening and deepening channels to accommodate larger vessels, have deterred the trend to larger tonnage (Trace 1998b, p. 11).

Box 2.1 **Economies of vessel size**

Economies of vessel size exist when the unit costs of operating a ship decrease as the size of the vessel increases. Economies of vessel size are present in each of the three major components of ship costs — capital costs, crew costs and fuel costs.

In capital costs, economies are driven primarily by the physical fact that as the size of a vessel increases the ratio of the surface area of the hull to its volume, and hence the quantity of steel required per unit of volume, declines. There are also significant scale economies in other capital components including the costs of engines, crew accommodation, information technology and navigational equipment.

With respect to crew costs, there is little variation in crew numbers as the size of liner vessels varies. The relationship between fuel costs and vessel size is such that fuel consumption tends to increase less than proportionally, implying the cost of fuel per unit of cargo carried tends to fall.

Meyrick & Associates (sub. 5, p. 7, based on figures from Jansson and Shneerson 1985) estimates that for every 10 per cent increase in vessel size, unit costs fall by about 3–4 per cent.

The above economies of vessel size all point in the same direction — a trend toward increasingly larger ships in the container shipping industry.

Source: Meyrick & Associates (sub. 5).

Increased capacity

The trend to larger ships has been accompanied by strong growth in available liner capacity. Most trade routes have been oversupplied with ships since the 1970s. According to Trace (1998b, p. 5), the OECD estimated excess capacity[1] of 35 per cent in the Trans-Pacific trade and 40 per cent in the Europe–Far-East trade in 1985, and the situation worsened during the global recession of the early 1990s.

Excess capacity in liner shipping is a result of a number of factors, including, somewhat counter-intuitively, increased competition in the liner shipping industry. Increased competition appears to have led to a quest by carriers for lower costs, which in turn has led to more and bigger ships.

Excess capacity also is due to the provision by governments in some parts of the world, such as South Korea, of shipbuilding subsidies, vessel operating subsidies, special taxation provisions relating to investment in shipping and special taxation treatment for ship operators (LSS, sub. 10, p. 4). Subsidies have the effect of increasing the supply of ships relative to demand, such that at any given level of freight rates more ships are chasing a given volume of cargo (Trace 1998b, p. 6).

Further contributing to the problem of excess capacity in the supply of liner ships are the low scrapping rates in the industry. The Department of Transport and Regional Services (sub. 3, p. 6) states that in 1996 the rate of scrapping of ships was only 0.5 per cent of total capacity.

Changes in concentration

The trend to larger ships has been accompanied by a clear tendency toward consolidation of carriers in liner shipping (see table 2.3) in an attempt to capture economies of scale and scope.

The increase in global concentration has been achieved via a relatively large number of mergers of shipping lines in recent years.[2] However, despite the mergers and

1 At the macro level, excess capacity exists when the carrying capabilities of the global liner fleet exceed the volumes of cargoes shipped. At the micro or trade level, excess capacity exists when vessels operate at relatively low levels of capacity utilisation. Liner shipping operators run regular services along a predetermined route and vessels sail according to a prearranged schedule whether or not they have full cargoes. Thus, it would not be expected for liner vessels to operate at or close to 100 per cent of capacity.

2 Recent mergers, takeovers and shareholding agreements include: the purchase of Sea-Land by Maersk; the acquisition of APL by NOL; the merger between P&O and Nedlloyd; the purchase of CGM by CMA; the acquisition of Lykes and Ivaran Lines by CP Ships; the purchase of Blue Star by P&O Nedlloyd; and the majority shareholding of Hanjin Shipping Company in DSR

increase in concentration, no single line controls more than 6 per cent of the world's total container capacity. The top 20 carriers account for only about half of world liner vessel capacity. (Hoffmann 1998; Mercer 1999, p. I-1)

Table 2.3 **Twenty largest carriers' share of total liner shipping capacity, 1986 to 1998**

Year	*Share of total liner shipping capacity*
1986	35 per cent
1990	39 per cent
1992	42 per cent
1993	44 per cent
1994	46 per cent
1998	53 per cent

Sources: BTCE (1995a, pp. 10–11); Trace (1998b, p. 8); Meyrick & Associates (sub. 5, p. 9).

Besides mergers, the industry has experienced a complex pattern of alliance formation and dissolution.[3] Strategic alliances offer carriers an opportunity to: aggregate cargo volumes; increase service frequencies; improve asset utilisation through the sharing of vessels, terminals, equipment and containers; and employ their collective financial strength for long-term asset procurement and replacement. (Hoffmann 1998)

In general, however, alliances have been characterised by frequent breakdowns, mainly as a result of mergers between lines belonging to different alliances. Although alliances will probably continue to exist for some time, in the long run they may be superseded by outright mergers. Most industry observers expect more consolidation in the future. (Trace 1998b, p. 9; Hoffmann 1998)

Growth in round-the-world, pendulum and transhipment services

Prior to the introduction of containerisation in the late 1960s most carriers operated 'out-and-back' shipping services between ports in two or more countries. Opportunities for different types of service have emerged as a result of the increase in the scale of cargo flows between the three major northern hemisphere trade regions of North America, Europe and East Asia.

Senator Line (Hanjin itself was formed through the merger of Hanjin and the Korea Shipping Corporation) (Hoffmann 1998).

3 Alliances covering the world's three major trades routes (trans-Pacific, trans-Atlantic, Europe–Asia) include the Grand Alliance (NYK, Hapag-Lloyd, MISC, OOCL, P&O Nedlloyd), the New World Alliance (Hyundai Merchant Marine, MOL, American President Lines) and the United Alliance (Hanjin, Cho Yang, DSR-Senator, United Arab Shipping Co.) (LSS, sub. 10, p. 7).

'Round-the-world' services now link the three major trade regions with vessels continually circling the globe in an eastbound or westbound direction. 'Pendulum' services typically operate from the east coast of North America via Europe and Asia to the west coast of North America, returning via the same route. Round-the-world and pendulum operators compete with out-and-back services provided by carriers specialising in the Europe–Far-East, trans-Pacific or trans-Atlantic trades. (Trace 1998a, p. 3, 1998b, p. 12)

There also has been a significant increase in transhipment services, whereby cargo is transported via regional 'hub' ports. Hub ports connect mainline east–west trade routes to destinations off the mainline routes, such as Australia, via feeder shipping or landbridging (overland transport). The emerging pattern of feeder services to mainline routes is analogous to the 'hub-and-spoke' networks of airline services which evolved following the deregulation of US domestic aviation. (Trace 1998b, pp. 12–13)

As part of the development of a hub-and-spoke network in international liner shipping it appears a number of 'super hubs' are emerging. The changing pattern of port calls by vessels in the Europe–Far-East trade suggests that Singapore, Hong Kong and Kaohsiung (Taiwan) are strengthening their competitive positions with respect to other hubs in the Asian region. There also has been strong growth in recent years in container movements through the port of Shanghai. (Trace 1998b, p. 13; Hoffmann 1998)

The trend favouring transhipment in liner shipping can be expected to continue. Whilst early transhipment services proved unreliable and were characterised by longer transit times than direct services, transhipment services increasingly offer a reliable and cost effective alternative to direct services. Whilst direct services usually are quicker than transhipment services, transit times vary between transhipment operators, and in some cases transhipment services can offer shorter transit times than direct services. For example, on the Australia–Europe trade the transhipment operator AAA consortium offers a 30-day transit time between Melbourne and the United Kingdom. In comparison, the fastest direct service between Melbourne and the United Kingdom is 31 days (LLDCN, 28 May 1999, p. 10).

Increased competition in north–south trades

Until the late 1980s, most liner services from northern hemisphere ports to Latin America, Africa or Australia/New Zealand were provided by lines specialising in direct north–south services. Recently, major east–west carriers have entered the

north–south trades, typically by way of feeder (transhipment) services linking with their round-the-world or pendulum services at major northern hemisphere hub ports.

The expansion of major east–west carriers into north–south and regional markets has been a result of the need to fill increasingly larger ships employed in mainline east–west trades, the cascading of older, medium-sized ships into secondary markets and a desire to establish global shipping networks (Hoffmann 1998; Trace 1998b, p. 14).

Growth of multimodal operators and freight forwarders

To meet the increasing demands of global manufacturers (and to seek a better financial return) more carriers are offering multimodal and door-to-door transport services rather than just sea carriage (BTCE 1995a, p. 8).

Competing against carriers in offering multimodal and door-to-door services are an increasing number of freight forwarders. Freight forwarders book and pay for blocks of container slots, at a discount from carriers, for some or all sailings of liner vessels, and sell these spaces on to shippers. Though forwarders compete with carriers for customers, they offer carriers a stable cargo base. In the United States and Great Britain one third of all liner cargo is handled by freight forwarders and in Germany the figure is more than three quarters. (Hoffmann 1998; John Zerby, sub. 7, p. 9)

Low freight rates

For a number of years shippers have enjoyed relatively low (and often falling in nominal and real terms) freight rates. Meyrick & Associates stated:

> According to UNCTAD (1998), average container freight rates to and from Europe fell, in nominal terms, by around 10% between 1991 and 1999. This European-based index does not include rates on the trans-Pacific routes … and those on intra-Asian routes, both of which have been hit particularly hard by recent events in Asia. The average worldwide decline in freight rates is therefore likely to be somewhat larger than the UNCTAD index suggests. (sub. 5, p. 51)

Table 2.4 shows published liner conference freight rates, in nominal values, for three major trades from 1988 to 1995. Published freight rates do not reflect accurately actual rates paid, which often are significantly lower. It also should be noted that nominal rates do not take account of inflation.

Table 2.4 **Published conference freight rates, nominal values, 1988 to 1995 ($US per TEU)**

Year	*Europe–Far-East*	*Trans-Atlantic (westbound)*	*Trans-Pacific (westbound)*
1988	3 263	2 841	1 157
1989	3 254	2 884	1 473
1990	3 266	3 121	1 498
1991	2 788	3 321	1 506
1992	2 785	3 277	1 657
1993	2 724	3 052	1 614
1994	2 737	2 913	1 419
1995	2 675	2 958	1 640

Source: Trace (1998b, p. 6, taken from OECD *Maritime Transport*, based on data supplied by *Lloyd's Shipping Economist*).

The main reasons for decreasing real freight rates, apart from short-term demand fluctuations, appear to be technological progress, economies of vessel size, excess capacity and increased competition.

Low profitability

The levels of profitability achieved for a selection of liner shipping companies in 1997 are shown in table 2.5.

Table 2.5 **Financial results for a cross-section of liner shipping companies, 1997 (per cent)**

Company	*Gross profit margin*[a]	*Return on investment*[b]
MISC	19.94	9.22
Wilhelmsen Lines	15.98	na
Maersk Line	13.58	13.38
CP Ships	9.89	10.98
Mitsui OSK	5.64	3.66
Evergreen Marine Corp Ltd	5.46	3.20
Yangming Marine Transport Corp	5.25	4.44
Hanjin Shipping	4.95	2.88
Sea-Land Services	4.64	7.18
Nippon Yusen Kaisha	4.28	3.18
P&O Nedlloyd	2.17	2.00

a Gross profit margin is operating profit as a percentage of total revenue. **b** Return on investment is operating profit as a percentage of assets. **na** Data not available.

Source: Fossey (1998a, in Meyrick & Associates, sub. 5, p. 52).

On the whole, profitability is low and has been so for many years (see Drewry Shipping Consultants 1993; Mercer 1999; and Meyrick & Associates, sub. 5). For example, a recent US study (Mercer 1999) concluded that:

> … in general, ocean carriers have returned less value to shareholders than other transportation modes and have underperformed US equity benchmarks such as the S&P 500 and DJTA (Dow Jones Transportation Average). (p. I-2)

Generally, the view is that profitability of liner carriers is poor because of intense competition rather than lack of efficiency.

Low profits may be a force driving carriers toward strategies involving alliances, mergers and building larger ships in an effort to capture economies of scale and scope. P&O Nedlloyd stated:

> It is no secret that financial results of all container liner shipping companies are, and have been for a considerable number of years, mostly unsatisfactory to modest at best. … This lack of profitability has led to a significant degree of consolidation in the industry in recent years. (sub. 6, p. 1)

South-East Asian economic downturn

Participants to this inquiry have suggested that the South-East Asian economic downturn, which began in late 1997, has slowed growth in trade, exacerbating the problem of excess capacity in global liner shipping and contributing to the situation of low freight rates. Furthermore, the Asian 'crisis' resulted in massive exchange rate depreciation, which discouraged imports and encouraged exports. This has caused particular problems of excess capacity on inward Asian trades.

Implications for competition

The picture emerging is of a global liner shipping industry experiencing significant, and in some cases rapid, change. Thus far, the trend towards greater industry concentration via mergers and acquisitions does not appear to have reduced competition. On the contrary, it appears the expansion of global shipping companies has increased competition on individual routes — Asian lines have entered the North Atlantic trade, east–west lines are entering north–south markets and the feeder services of large carriers are competing with traditional regional lines. (Hoffmann 1998)

Similarly, growth in alternative types of liner shipping service, notably transhipment services, and the growing role of freight forwarders has placed increasing competitive pressure on carriers. To a minor extent potential competition in transporting general cargo exists in the form of alternative modes of transport such as air transport and tramp shipping (LSS, sub. 10, p. 7).

Many of the factors driving change in liner shipping appear to be long-term rather than transitory and are having profound effects on Australian liner trades.

2.2 Australian liner shipping market

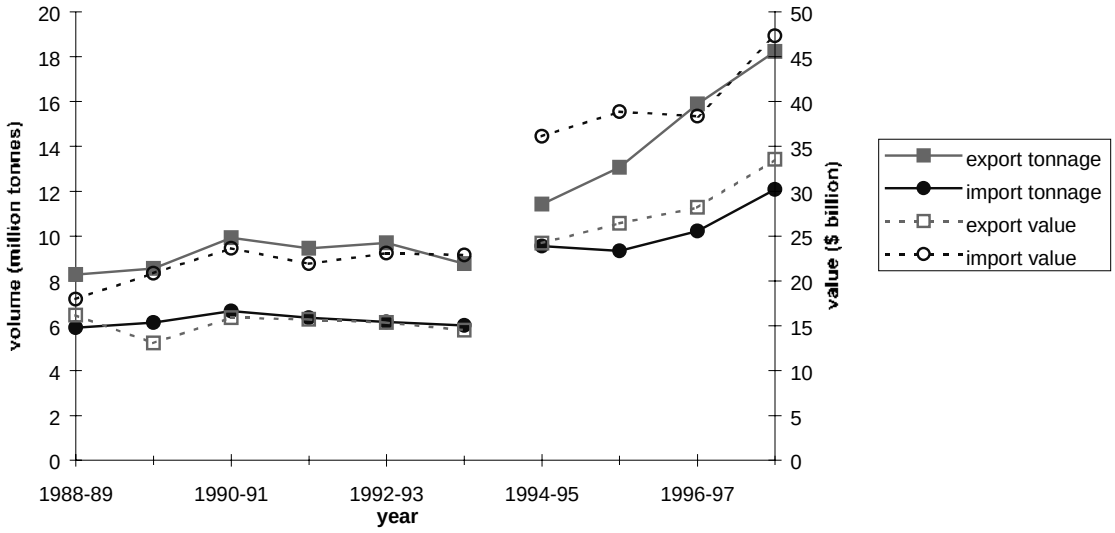
Shipping is the major mode of transport for Australia's exports and imports. In 1997-98, 79 per cent of Australia's $87.7 billion worth of merchandise exports, and 71 per cent of Australia's $90.7 billion worth of merchandise imports, were transported by sea (ACS 1999, p. 19; ICSD 1999). Many of Australia's major exports and imports are bulky or dense, and sea transport is the only viable mode of transport.

The majority of Australia's exports and imports (coal, iron ore, wheat, petroleum and fertiliser) are shipped by bulk carriers or tankers. In 1997-98, the liner trades accounted for only 4.3 per cent and 23 per cent of the weight of Australia's seaborne exports and imports respectively. The liner trades are far more significant in value terms, because liners tend to carry higher value cargoes. In 1997-98 liners accounted for 48 per cent and 74 per cent of the value of Australia's seaborne exports and imports respectively (ICSD 1999).

The weight and nominal value of Australian liner exports and imports have increased significantly over the last decade (see figure 2.1). Liner exports have increased from 11.4 million tonnes (worth $24.2 billion) in 1994-95 to 18.2 million tonnes (worth $33.5 billion) in 1997-98. Liner imports have increased from 9.5 million tonnes (worth $36.1 billion) in 1994-95 to 12.1 million tonnes (worth $47.3 billion) in 1997-98.

Detailed data describing Australia's sea freight task are presented in appendix C.

Figure 2.1 **Australian liner exports and imports by weight and value, 1988-89 to 1997-98 (million tonnes and $billion)**[a]



a A series break exists in mid-1994 therefore data before 1994-95 cannot be compared in absolute terms with data from 1994-95 onward.

Data source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Major trade routes

Australian liner trades have been described as 'long' and 'thin', a product of Australia's relative isolation and the size of its economy. Australia is not located on the major round-the-world or east–west trade routes — its major trade routes run north–south. Furthermore, while Australia ranked 15th in the world in terms of the number of container movements in 1997, the Australian coastal and liner trade of 2.74 million TEU accounted for only 1.67 per cent of the estimated world total in that year (Containerisation International 1999, p. 8).

Major trade partners for Australian liner exports and imports are East Asia, Europe, Japan and North Asia, New Zealand, North America, and South-East Asia.[4] While total Australian liner trade is thin by world standards, cargo flows on several major routes are substantial, for example the Japan and North Asia, New Zealand, East Asia and South-East Asia routes. Import and export cargo tonnages on major trade routes in 1997-98 are presented in table 2.6.

4 A list of countries comprising the trade areas in this chapter is presented in appendix C.

Table 2.6 **Cargo on major Australian liner trade routes, 1997-98 (tonnes)**

Trade route	*Exports*	*Imports*	*Ratio of exports to imports*
Japan and North Asia	4 181 550	1 193 513	3.5
South-East Asia	3 584 569	1 817 367	2.0
East Asia	3 554 003	1 588 433	2.2
Europe	1 621 187	2 955 052	0.6
North America	1 302 940	2 124 893	0.6
New Zealand	1 226 090	1 296 379	1.0
Total	**18 231 552**	**12 076 149**	**1.5**

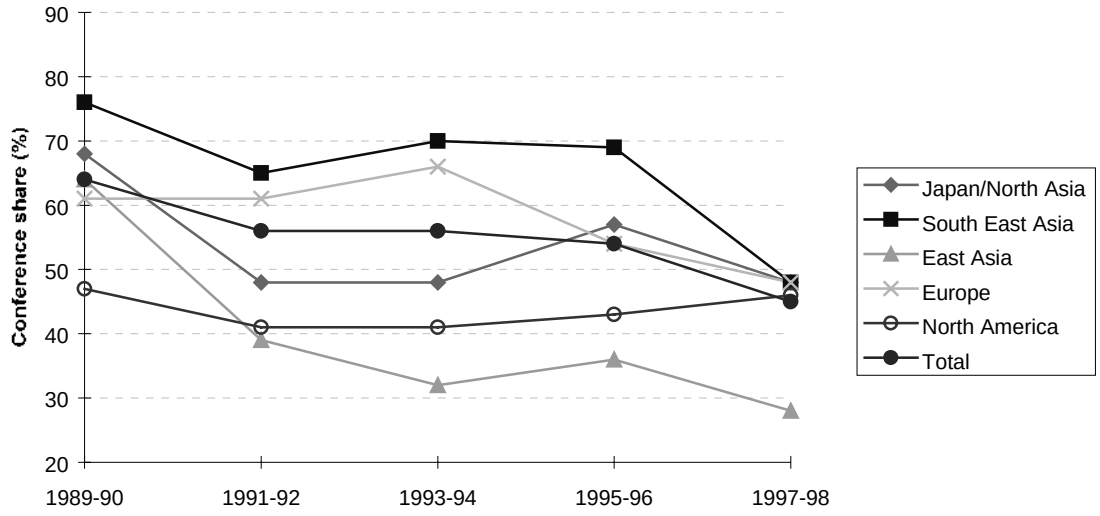
Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

In 1997-98 the total weight of liner exports was around 50 per cent higher than the total weight of imports. Since 1994-95 the weight of exports has exceeded the weight of imports on the Japan and North Asia, New Zealand, South-East Asia and East Asia trade routes, while for Europe and North America the weight of imports has exceeded the weight of exports.

Due to the fact that Australia's exports are denser cargoes than its imports, and vessel deadweight limitations, a relatively large number of empty containers are carried on outward journeys compared to inward journeys. Australia's dense export cargoes also affect the use of forty foot containers, since the weight of a forty foot container filled with dense cargo can exceed the capacity of cargo handling equipment. This, combined with Australia's geographical position at the end of north–south trade routes, the fact that, in contrast to import cargoes, a relatively high proportion of Australia's exports require refrigerated shipping capacity, and the seasonality of some major export cargoes, makes Australia's liner shipping requirements very complex to manage.

In line with global trends, conference shares of Australian liner exports and imports for major trade routes have declined overall in recent years, although shares on some trades have run counter to the trend (see figures 2.2 and 2.3). Conference shares of exports have declined on the South-East Asia, East Asia, Europe, and Japan and North Asia routes, while conference shares of imports on the South-East Asia, East Asia, Europe and North American routes also have declined. In 1997-98 conferences carried 45 per cent of the weight and 56 per cent of the value of liner export cargoes, and 54 per cent of the weight and 64 per cent of the value of liner import cargoes. These shares suggest conference vessels tend to carry somewhat more valuable cargo than non-conference vessels.

Figure 2.2 **Conference share of the weight of liner exports for selected trade regions, 1989-90 to 1997-98**



Data source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Figure 2.3 **Conference share of the weight of liner imports for selected trade regions, 1989-90 to 1997-98**

Data source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Major liner cargoes

Australia's major liner export and import cargoes (listed in table 2.7) tend to have different characteristics and shipping requirements. Exports tend to be commodities (such as meat, cereals and dairy products) whereas imports are largely manufactured goods (such as machinery, vehicles and chemicals). In contrast to many export cargoes, import cargoes generally do not require refrigeration. Australia's exports also tend to comprise more dense cargoes than its imports.

Table 2.7 **Conference share of major liner export and import commodity groups by weight, 1997-98 (per cent)**

Exports	*Share*	*Imports*	*Share*
Meat and meat preparations	74	Paper, paperboard and articles of paper	50
Iron and steel	29	Chemicals	59
Vegetables and fruit	51	Machinery	58
Dairy products and birds eggs	63	Non-metallic mineral manufactures, nes[a]	58
Feeding stuff for animals	63	Miscellaneous manufactured articles	62
Chemicals	41	Iron and steel	25
Aluminium and aluminium alloys	28	Cork and wood	47
Cereals and cereal preparations	39	Vegetables and fruit	64
Wool, sheep and lambs	64	Textile yarn, fabrics and made-up articles	72
Machinery	62	Road vehicles and transport equipment	66
Road vehicles and transport equipment	65	Manufactures of metals, nes[a]	66
Cotton	63	Articles of apparel and clothing accessories	39

a Not elsewhere specified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

The high proportion of refrigerated container slots required to carry Australia's exports of meat, dairy products and other refrigerated cargoes significantly increases vessel and container capital and operating costs. It also increases the need to carry empty refrigerated containers to Australia, since many of Australia's imports cannot be carried in refrigerated containers. Empty dry containers must then be carried from Australia for subsequent use in other trades. These problems exacerbate those caused by the trade volume imbalance on a number of major Australian trade routes.

Conferences have a greater share of trade (judging by weight) than independent operators in some major liner export commodities, such as meat, road vehicles and transport equipment, dairy products, animal feedstuffs, wool, machinery and cotton. For a number of other export commodities — including aluminium, iron and steel, chemicals and cereals — non-conference vessels dominate. These non-conference operators are often niche operators, specialising in the carriage of particular commodities or serving particular regional ports. For example, BHP Transport has carried large volumes of iron and steel on its own fleet.

Shipping capacity

As a result of Australia's relatively thin trade volumes, vessels employed in the Australian trades typically are much smaller than vessels in the major east–west trades (vessel sizes in mainline northern hemisphere trades are discussed in section 2.1). While costs may be reduced, the employment of significantly larger vessels generally reduces service frequency and thereby could disadvantage Australian shippers. Nevertheless, in line with global trends, there has been a move to employ larger vessels in some Australian trades — primarily, though not exclusively, as a result of the 'cascading' of vessels formerly employed in mainline northern hemisphere trades (see table 2.8).

Table 2.8 **Average conference and non-conference vessel capacities on major Australian trade routes, 1993 and 1998 (TEU)**[a]

Trade route	*1993*		*1998*	
	Conference	*Non-conference*	*Conference*	*Non-conference*
Europe	2 021	1 074	2 284	1 405
North-East Asia	1 585	1 158	1 849	1 521
South-East Asia[b]	1 169	1 189	1 170	2 117
North America[c]	1 178	na	1 252	1 366

a Vessel capacities are optimum capacities and do not take into account deadweight limitations and the fact that some of this capacity may be used for cargo from other countries. **b** Significant changes have occurred in this market over the period, with an increase in transhipment through South-East Asia, and replacement of the conference with a discussion agreement (along with a significant change in membership). **c** Data for North America are 1999 data. **na** Data not available.

Sources: Liner Shipping Services (sub. 10, att. C, pp. 12–51); DTRS Liner Service Sheets.

Total liner capacity servicing Australia is determined by vessel capacity and frequency of service. Average monthly liner shipping capacities for major Australian trade routes in 1993 and 1998 are summarised in table 2.9. Average monthly capacity has increased significantly on the Europe, North-East Asia and South-East Asia routes.

Table 2.9 **Average monthly capacities for major Australian trade routes, 1993 and 1998 (TEU)**

Trade route	*1993*			*1998*		
	dry	*reefer*	*total*	*dry*	*reefer*	*total*
Europe	34 885	7 150	42 035	56 383	12 244	68 627
North-East Asia	39 763	7 007	46 770	67 474	9 621	77 095
South-East Asia	31 499	4 604	36 103	44 710	8 046	52 756
North America[a]	na	na	na	27 844	8 323	36 167

a Data for North America are 1999 data. **na** Data not available.

Sources: Liner Shipping Services (sub. 10, att. C, pp. 12–51); DTRS Liner Service Sheets.

Conference shares of average monthly capacity are presented in table 2.10. Conference shares of total average monthly capacity have remained relatively constant on the European and Asian routes, while conference shares of average monthly reefer capacity have declined on these routes.

Table 2.10 **Conference share of average monthly capacity for major Australian trade routes, 1993 and 1998 (per cent)**

Trade route	*1993*			*1998*		
	dry	*reefer*	*total*	*dry*	*reefer*	*total*
Europe	35	71	41	36	39	37
North-East Asia	30	54	34	29	45	31
South-East Asia[a]	51	83	55	56	63	57
North America[b]	na	na	na	36	64	43

a The conference operating in this route in 1993 was replaced by a discussion agreement in 1997. Membership of the discussion agreement is significantly different to the conference. **b** Data for North America are 1999 data. **na** Data not available.

Sources: Liner Shipping Services (sub. 10, att. C, pp. 12–51); DTRS Liner Service Sheets.

Detailed data on shipping capacity in the Australian market are presented in appendix D.

Transhipment and landbridging

In the past, cargoes often were carried from country of origin to country of destination on a direct service. Today, many Australian shippers have a choice between a direct service and transhipment via a hub port such as Singapore. Transhipment services to and from Australia generally are provided by non-conference lines. In the past, transhipment frequently resulted in a lower quality service to Australian shippers, compared to the service provided by direct shipping services, due to longer transit times and the possibility of cargo being damaged during transhipment. Today, however, the quality of transhipment services often is comparable to that of direct services.

The use of significantly larger (and lower cost per unit of cargo carried) vessels on mainline east–west routes than on Australian routes, coupled with overcapacity and greater intensity of competition on northern hemisphere routes, has made transhipment via Asian ports a viable alternative to direct shipping services.

Estimates of the level of transhipment of Australian cargoes are available from several sources. For example, around 10 per cent of containers between Australia/New Zealand and the US west coast are reported to be transhipped (LLDCN, 16 July 1999, p. 10), and almost 30 per cent of the southbound Europe–

Australia trade is reportedly transhipped through Asian ports (LLDCN, 28 May 1999, p. 1). Liner Shipping Services estimates that around 15 per cent of the southbound Europe–Australia trade is transhipped, while transhipment on the northbound trade to Europe via South-East Asia is currently about 10 per cent of the total trade (sub. 10, att. C, p. 1).

Official estimates of the level of transhipment of Australian cargoes are available from the International Cargo Statistics database provided by the Bureau of Transport Economics (BTE). While these estimates suggest that the level of transhipment has increased, they are lower in absolute terms than industry estimates of transhipment. The difference between BTE and industry estimates may be partly reconciled by the fact that the level of transhipment of Australian cargoes has reportedly increased significantly in recent years (data from the BTE is available only up to 1997-98). There is also an issue of definition of transhipment which may partly explain the differences (see page 26). Furthermore, the inclusion of significant volumes of charter cargo from regional ports (which would not be transhipped) as liner cargo in the BTE database could result in the percentage of liner cargo transhipped appearing lower than industry estimates.

Nevertheless, data from the International Cargo Statistics database suggests that over the past decade the proportion of Australian export cargoes transhipped through South-East Asian and African ports has increased significantly, albeit from a low base (see table 2.11). Transhipment of export cargoes through East Asian, Japanese and North Asian and North American ports also has increased. Over the same period, transhipment of exports through European ports has decreased.

Table 2.11 **Shares of total weight of Australian liner exports and imports which were transhipped, by region of transhipment, 1989-90 and 1997-98 (per cent)**

Country/region of transhipment	*Exports*		*Imports*	
	1989-90	*1997-98*	*1989-90*	*1997-98*
Africa	0.01	0.25	0.12	0.08
East Asia	0.16	0.26	0.29	0.36
Europe	0.22	0.10	0.32	0.42
Japan & North Asia	0.12	0.28	0.15	0.19
North America	0.05	0.15	0.22	0.23
Red Sea & Mediterranean Middle East	0.25	0.01	0.01	0.01
South-East Asia	0.13	1.82	0.07	1.59
Total	**2.53**	**2.98**	**2.27**	**3.32**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

There is a similar pattern for Australian imports, with strong growth in transhipment through South-East Asian ports. Moderate growth in transhipment of import cargoes through East Asia, Europe and Japan and North Asia also has occurred.

Given Australia's geographical location, it is not surprising that Singapore has increased significantly in importance as a major transhipment port for Australian cargo over the past few years. Transhipment of exports and imports through this region increased 14-fold and 23-fold respectively between 1989-90 and 1997-98. In 1997-98 transhipment of Australian exports and imports through South-East Asia were in the order of 332 and 192 kilotonnes respectively (ICSD 1999).

Transhipment of Australian imports and exports by region of origin and destination are presented in table 2.12.

Table 2.12 **Shares of total weight of Australian liner exports and imports transhipped, by region of destination/origin, 1989-90 and 1997-98 (per cent)**

Country/region of destination/origin	*Exports*		*Imports*	
	1989-90	*1997-98*	*1989-90*	*1997-98*
East Asia	0.6	3.5	1.6	2.4
Europe	1.0	4.7	1.5	3.4
India	2.1	10.4	13.5	6.2
Japan & North Asia	1.6	2.6	2.2	3.5
North America	1.2	4.8	7.0	9.7
Red Sea & Mediterranean Middle East	1.2	32.7	28.4	3.9
South-East Asia	0.8	0.3	0.3	0.7
Total	**2.53**	**2.98**	**2.27**	**3.32**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

It should be noted that the transhipment data presented in tables 2.11 and 2.12 include only cargo that is transhipped in a different trade region to its region of origin or destination. For example, export cargoes bound for Europe which are transhipped in South-East Asia are included in the transhipment data presented here. However, export cargo destined for Europe that is transhipped in Europe is not included, nor is import cargo from East Asia that is transhipped in East Asia.[5] The available data do not differentiate between transhipment and landbridging. Data on transhipment and landbridging within trade regions therefore have been excluded from the data presented here in an attempt to identify transhipment services

5 This is in contrast to transhipment data presented in Brazil *et al* (1993), which include all transhipped cargoes, including those transhipped in the region of origin or destination. Data consistent with the data presented in Brazil *et al* (1993) are presented in appendix C, and are an upper bound to official statistics on the total level of transhipment of Australian cargoes.

competing with direct services on Australia's major trade routes. The data presented thus represent a lower bound to the total level of transhipment of Australian cargoes. Nonetheless, they confirm increased competition to direct services.

Landbridging is the transporting of cargo by rail or road to or from an exporting or importing port. Australia's unique geography, whereby most major cities are located on a coastline that is easily circumnavigated, generally means that when transporting cargo within Australia there are not major differences in distance and time, and sometimes cost, between sea, road or rail transport. However, Australia's large geographical size and relatively small population mean it is not always cost effective for container ships to provide services to all ports. Thus, landbridging may be utilised where there is insufficient cargo to make it worthwhile for a vessel to call at a particular port or when a vessel has been delayed and owners wish to maintain a vessel's pre-arranged schedule and hence bypass an advertised port of call.

On the other hand, in the United States the lack of a continuous coastline generally means, when transporting goods between east and west coasts, the route is shorter and hence it is more timely and cost effective to ship goods by road or rail rather than by sea via the Panama Canal. Furthermore, many major US cities lie inland and hence it is necessary that a significant part of containerised cargo is landbridged.

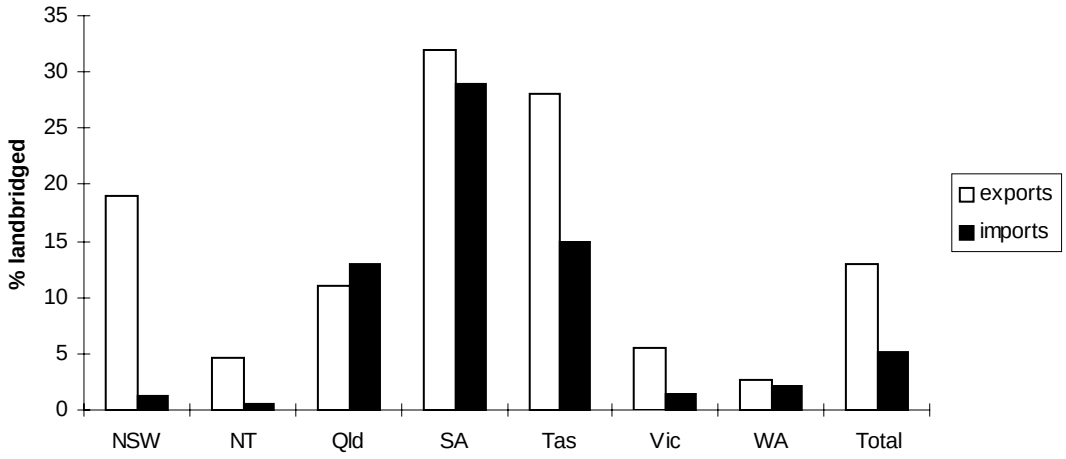
There appears to have been little change in the weight of Australian liner exports and imports landbridged over the past decade.[6] In 1997-98, the total percentage of Australian exports and imports landbridged (by weight) was 12.9 per cent and 5.1 per cent respectively. The shares of liner exports and imports landbridged by each Australian state in 1997-98 are shown in figure 2.4. Compared to cargoes from other states, a higher percentage of Queensland, South Australian and Tasmanian cargoes are landbridged, which could suggest these states are less well serviced by liner vessels. The relatively high percentage of exports from NSW that are landbridged may reflect the fact that Melbourne is closer than Sydney to regions of southern NSW.

Over the last decade, most landbridged imports were shipped through NSW and Victorian ports, while the majority of landbridged exports were shipped through Victorian ports (ICSD 1999).

Detailed data on transhipment and landbridging of Australian export and import cargoes are presented in appendix C.

6 Landbridging data presented here assumes landbridging occurs when the port of loading or unloading is in a different state to the state of origin or destination.

Figure 2.4 **Shares of weight of Australian liner exports and imports landbridged, by state, 1997-98**[a]



a All ACT exports and imports are landbridged.

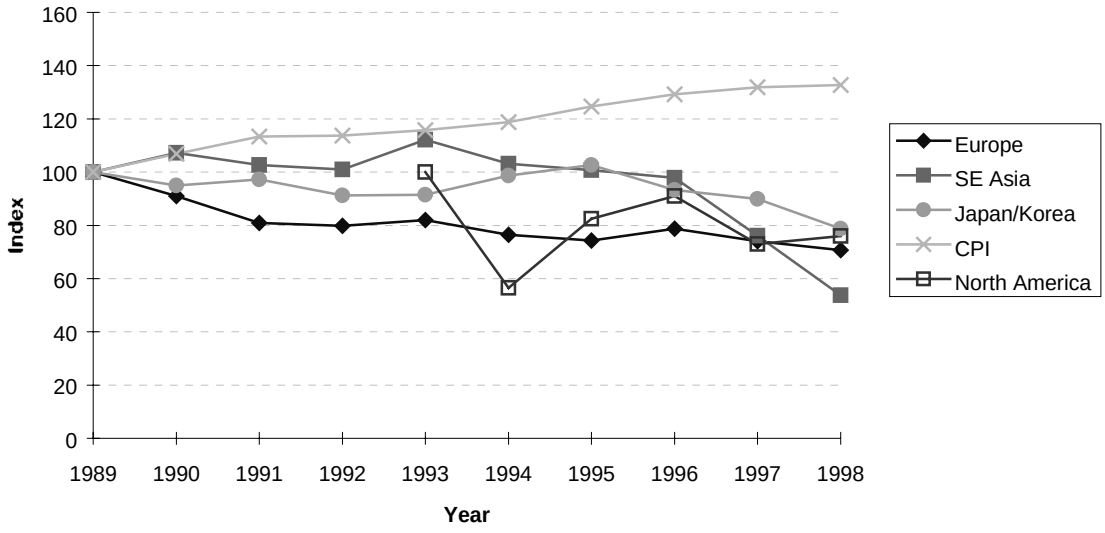
Data source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Supply of liner services and freight rates

Southbound (import) rates on the Europe, South-East Asia and North Asia trades have declined more than northbound (export) rates since 1989 (see figures 2.5 and 2.6). This is likely to be due at least in part to the trade imbalance in Asia, which means Australian exports are competing with increased volumes of Asian exports on northbound routes (except for exports to South-East Asia which are complementary). Australian imports seem to experience less competition for capacity from imports bound for Asia on southbound trade routes.

Further freight rates data are presented in the case studies of major Australian liner trades in chapter 5 and in appendix D.

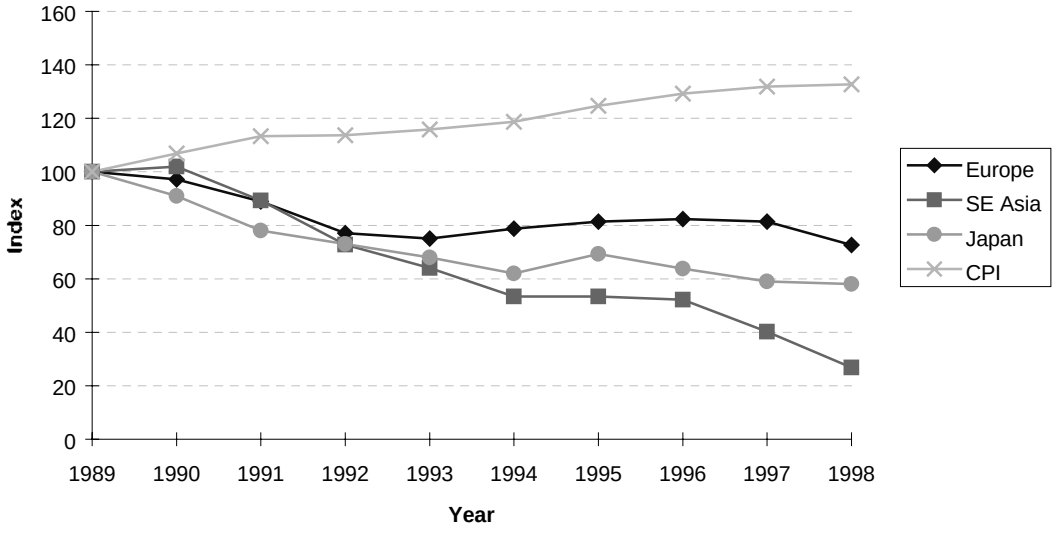
Figure 2.5 **Index of nominal freight rates in selected Australian northbound trades, 1989 to 1998**[a]



a Indices for Europe, SE Asia and Japan/Korea are based on estimates of actual terminal-to-terminal rates in Australian dollars, averaged over all reefer and dry cargoes. Index for North America is for bulk pack meat in cartons. Base year for North America is 1993.

Data source: Liner Shipping Services (sub. 10, p. 12–13).

Figure 2.6 **Index of nominal freight rates in selected Australian southbound trades, 1989 to 1998**[a]



a Based on estimates of actual terminal-to-terminal rates in US dollars, averaged over all reefer and dry cargoes.

Data source: Liner Shipping Services (sub. 10, p. 12).

3 Assessing regulation

The principal purpose of this inquiry is to report on the appropriate arrangements for regulation of international liner cargo shipping services. The ultimate objective of any regulatory regime should be to enhance national welfare. In order to assess the various regulatory options for international liner cargo shipping, including Part X, it is necessary to identify where the national interest lies and what arrangements in liner shipping markets are likely to promote that interest. The next step is to identify those features of a regulatory regime that might facilitate such an outcome. These issues are addressed below.

3.1 Identifying the national interest

Australia relies almost entirely on foreign shipping lines for international liner cargo shipping services — liner cargo shipping therefore is an imported service input. As explained in appendix B, liner shipping costs act in much the same way as a tax on imports and exports, with the cost incidence a function of relative demand and supply elasticities. Unlike taxes, however, shipping is an essential input to Australia's international trade.

In general, as discussed in appendix B, a reduction in the (inward and outward) cost of liner shipping to Australia for a given quality of service, or improved service for a given cost, will promote Australian economic well-being by reducing the cost of imports to Australian consumers and users of importable inputs, and by making Australian exports more competitive in world markets.[1] In this way, a reduction in shipping costs or improved service promotes Australia's international trade and thus enhances Australia's overall economic welfare.

Nonetheless, not all members of the community would gain. From the perspective of import-competing producers, including Australian flag liner shipping operators, a reduction in shipping rates is analogous with a reduction in tariffs. Although national economic welfare generally would increase, local producers of competing goods would then face increased competition from cheaper imports — the natural

1 If shipping costs fell worldwide, Australia's relative competitive position may not change (this woulc depend on Australia's shipping costs as a proportion of export costs relative to other countries), though Australia would still benefit from increased global trade.

protection afforded some local producers by distance will diminish. The extent to which individual producers are affected will depend on the net effect of shipping rate reductions on their input costs *versus* any effect on the price of their output.

Some may consider that this detrimental outcome for some import-competing producers weakens the case for lower cost or better quality shipping on inward trades. However, national welfare gains would be reduced if lower shipping rates were limited to outward trades. Unnecessarily high *inward* shipping rates will harm the export sector by keeping intermediate input prices higher than they otherwise would be and harm consumers by keeping import prices unnecessarily high.

Thus, though not all members of the Australian community will gain, the national interest is best served by efficient and competitively-priced outward and inward shipping services which directly promote the interests of Australian exporters and intermediate users and final consumers of importable goods.

Australian shippers and the national interest

Australian shippers (exporters and importers) generally have a clear interest in obtaining high quality shipping services at the lowest possible price. Reliable, low-cost shipping services can give exporters and importers a competitive edge in foreign and domestic markets respectively. Even if the shipper is a foreign-owned intermediary (for example, a multinational trader), provided there is competition between export traders and competition in markets for importables, lower shipping costs will be passed on to domestic export producers and domestic consumers of imports.

The Law Council of Australia disagreed with this assessment (trans., p. 69) suggesting that exporters may have little interest in negotiating better arrangements and rates with shipping lines if they (exporters) merely can pass on costs to foreign buyers. It is correct that if demand for Australian exports were completely inelastic, any shipping cost increases could be passed on to foreign consumers without affecting the quantity of exports sold or the price received for them by Australian producers. In other words, in this highly improbable situation,[2] higher (or, indeed, lower) shipping costs would not affect Australia's national welfare and, indeed, it

2 If this were the case, it would imply that Australian exporters could charge any amount they chose for their exports or that an export tax levied at an infinite rate should be levied. If Australian exports were restricted artificially by a quota, rather than inelastic demand, there would be an upper limit to the price that could be charged. In this case, lower freight rates directly increase exporters' returns and thus exporters have an incentive to pursue freight rate reductions.

would make little sense for Australian shippers to waste effort and resources trying to obtain lower freight rates.

In reality, however, Australian exporters face intense competition in world markets and, indeed, generally are regarded as price takers. In this environment, a saving in shipping costs will translate into a higher *producer* price for Australian producers and/or increased exports (see appendix B, section B.2). At worst, the cost saving will be shared between Australian producers and foreign buyers. Thus exporters generally will have a very strong incentive to negotiate appropriate quality shipping at the lowest possible price. Typically importers also operate in competitive markets and face similar incentives.[3]

Thus, if Australian shippers seek to maximise profits, there is a broad coincidence between shippers' interests and the national interest in relation to international liner shipping outcomes. In other words, shippers' interests in relation to international liner shipping act as a close proxy for the public interest.

3.2 Role of conferences

It follows from the discussion in section 3.1 that the main objective of any regulatory arrangement for international liner cargo shipping services clearly should be to promote efficient, adequate, reliable and competitively-priced international liner shipping services to and from Australia. A threshold issue in this inquiry is to establish what market arrangements are most likely to achieve this outcome and, in particular, whether under any circumstances liner shipping conferences are likely to promote such an outcome.

In contrast to bulk shipping, where each vessel carries one commodity on a charter basis, demand for liner shipping is diverse in terms of cargo size and type as well as aspects of service. The costs of coordinating these diverse demands virtually rules out ship chartering as an efficient form of service delivery.[4] On the other hand, the supply of regular, scheduled liner services provides a means of reducing

3 As with export markets, if the Australian market were restricted by quota, importers (and/or foreign exporters) would still have an incentive to obtain lower shipping costs. If Australian importers held the quota, lower-priced, foreign-supplied shipping would increase national welfare. However, the benefit is unlikely to be passed on to Australian consumers because the domestic price is fixed by the quota.

4 Freight forwarders consolidate cargoes to some degree and it is likely that computerisation will further reduce transactions costs of coordinating shippers' demands. However, it is unlikely that liner services will be replaced by charter operations.

transactions costs so that shippers with diverse demands are able to access liner shipping services.

Liner shipping conferences and other cooperative arrangements such as consortia, can provide a mechanism for efficient delivery of scheduled, direct shipping services on a particular trade route. Lower costs of provision of such services require the various economies of scale and scope, which characterise liner shipping, to be captured. This might suggest that the service on each trade would be offered by one or two large operators. However, a single shipping line may be loath to commit several large vessels (and incur correspondingly large fixed costs) in order to provide a comprehensive, regular, scheduled service where demand is uncertain (and subject to large swings as the result of exchange rate movements) and where that uncertainty is exacerbated by the possibility of rivals encroaching on the trade.

Cooperation with potential rivals offers an alternative way of reducing demand uncertainty. A lower risk premium will mean that larger ships can be utilised and filled to optimal capacity (thus capturing economies of scale), while a large conference fleet may generate additional economies (especially in terms of reducing container costs) and provide the coordinated scheduling valued by shippers. Importantly, conferences allow individual carriers to operate a global network, thus spreading trade risk and allowing them to capture associated economies (for example, by facilitating improved container logistics). In this sense, conferences may promote more efficient supply of liner services than a large operator on an individual trade (also see box 3.1 and appendix B). Clearly, however, they are not the only viable organisational structure, particularly with the emergence of 'mega-carriers' and rapid transhipment.

Because they involve cooperation, conference arrangements also can deliver market dominance to conference participants (just as company mergers might lead to market dominance). The extent to which such market power can be exercised will depend on the incentives for, and ability of, conference members to take independent action (that is, cheat), the extent of competition, or potential competition, from shipping operators outside the conference as well as the countervailing bargaining power of users of liner services.[5]

5 While competition may reduce potential cost savings of conferences (by reducing their market and scale of operation), it will reduce scope for the exercise of market power and 'x-inefficiency' within the conference.

Box 3.1 **Role of conferences**

- The supply of regular, scheduled liner services provides a means of reducing transactions costs so that shippers with diverse demands are able to access (and afford) adequate liner shipping services.
- Liner shipping is characterised by a range of economies of scale and scope which suggest that low cost supply of coordinated services is likely to require some form of industry integration.
- Conferences provide for a looser form of cooperation than a single company or joint venture and typically are route specific (even limited to one direction on each route). They may engage in joint price setting, capacity rationalisation, revenue and/or cost pooling arrangements, discriminatory pricing structures, and forms of customer loyalty agreement.
- Much of the behaviour of conferences appears consistent with classical cartel or monopoly behaviour. However, alternative models have been developed to take account of the fact that liner shipping operators do not appear to earn monopoly profits. For example, 'open cartel' models suggest that monopoly profits are dissipated in a process of excessive service competition between conference members and creation of excess capacity.
- Though many practices of conferences seem consistent with cartel behaviour, there may be alternative explanations. For example, apparent price discrimination (with some prices exceeding marginal cost) may be an efficient means of recovering high, joint fixed costs.
- Traditionally it has been argued that industry cooperation is necessary to ensure market stability. By reducing the risk associated with supplying large vessels to a trade, conferences may facilitate use of vessels and promote operations of optimal size, thus providing the regular services shippers demand, at low cost.
- The key to the impact of conferences in practice is whether they face effective competition or, at least potential competition from outside the conference (even though they reduce competition among members). In other words, to what degree are they constrained to charge competitive prices and to operate efficiently?
- The extent of market contestability and thus the intensity of competitive forces ultimately must be a matter for empirical investigation. Nonetheless, the fact that conferences are common in liner shipping and that they have persisted for over a century despite massive market expansion, technological change (especially containerisation) and the absence of significant barriers to entry suggests that they are not just monopoly cartels. Indeed, in the absence of regulatory barriers to entry, any entry restrictions must derive from the incumbency advantage of conferences themselves. In other words, any market power of conferences must derive from the cost savings they generate. If this is the case, elimination of conferences in a bid to remove market power inevitably will incur an efficiency cost.

If it is accepted that conferences can play a potentially useful role in service delivery — and most participants in this inquiry appear to agree on this point — it follows that an appropriate regulatory regime is one that can identify such beneficial arrangements and help to ensure that benefits are achieved and shared with Australian shippers, whilst minimising the potential to exploit monopoly power, to the detriment of Australian shippers. Conversely, a regime with the objective of thwarting such arrangements, while possibly weakening any market power of shipping lines, is likely to eliminate a source of potential benefit to Australian shippers and the community overall.

3.3 Evaluation criteria

In assessing the advantages and disadvantages of Part X and alternative regulatory regimes, the Commission has been guided by the terms of reference, the *Productivity Commission Act 1998* (see box 3.2) and the broad regulation review principles established by the Commonwealth Government together with the criteria of the Competition Principles Agreement (see chapter 1, box 1.1). These various criteria may not always be fully compatible and trade-offs sometimes will be necessary.

Drawing on these various guidelines and recognising the characteristics of liner shipping markets, the Commission considers that relevant criteria for assessing the various options include:

- *minimising adverse effects on competition.* As a general rule, competition will generate lower prices and better services for consumers. Nonetheless, care must be taken in defining and assessing competition. Under the *Competition Principles Agreement* (CPA), all legislation that restricts competition is required to be removed unless it can be demonstrated that the benefits of the restriction outweigh the costs and that restriction of competition is necessary to achieve the objectives of the legislation. Shipping conferences may be defended on the grounds that, while they limit competition between conference members, the result may be more stable and efficient service provision because they allow shipping operators to achieve a range of production economies. Nor is it clear that conferences necessarily limit competition — for example, the alternative to a conference may be a trade falling into the hands of one or two operators, especially on thin trades. In addition, the extent of competition in the industry may not be measured adequately by producer numbers. In particular, the degree of market contestability is a critical factor in assessing the level of competition in the market, as is the definition of the extent of the market itself. These issues are central to this inquiry and are discussed in chapter 6, section 6.2;

Box 3.2 **Section 2.8 of the PC Act: general policy guidelines for the Commission**

In the performance of its functions, the Commission must have regard to the need:

(a) to improve the overall economic performance of the economy through higher productivity in the public and private sectors in order to achieve higher living standards for all members of the Australian community; and

(b) to reduce regulation of industry (including regulation by the States, Territories and local government) where this is consistent with the social and economic goals of the Commonwealth Government; and

(c) to encourage the development and growth of Australian industries that are efficient in their use of resources, enterprising, innovative and internationally competitive; and

(d) to facilitate adjustment to structural changes in the economy and the avoidance of social and economic hardships arising from those changes; and

(e) to recognise the interests of industries, employees, consumers and the community, likely to be affected by measures proposed by the Commission; and

(f) to increase employment, including in regional areas; and

(g) to promote regional development; and

(h) to recognise the progress made by Australia's trading partners in reducing both tariff and non-tariff barriers; and

(i) to ensure that industry develops in a way that is ecologically sustainable; and

(j) for Australia to meet its international obligations and commitments.

- *consistency with Australia's economic power and legal jurisdiction.* This inquiry raises issues concerning the extent of Australia's jurisdiction over foreign service providers and Australia's commercial powers over international business operations (see appendix B for a discussion of countervailing power). Any regulatory approach must recognise these constraints — in other words, it must be workable and enforceable in a manner that promotes Australia's interests;
- *compatibility with international regulatory regimes.* The terms of reference require the Commission to take into account the interface of the various regulatory options with international regulatory regimes and international agreements;
- *minimal regulation.* Underlying Commonwealth guidelines, guidelines in the Productivity Commission Act (see box 3.2), and the terms of reference for this

inquiry, is a general presumption that regulation should be applied only where it clearly can be demonstrated that such intervention would be preferable to market outcomes. An interesting issue in this inquiry is whether an *exemption* from competition law (Part X), albeit a conditional exemption, which allows private operators to enter into various arrangements at their discretion, involves more or less regulation than the application of national competition law, which might prevent them from making such arrangements;

- *predictability.* The terms of reference ask the Commission to assess the 'predictability of outcome on standards of shipping services provided' under each regulatory option considered;
- *flexibility to adapt to changing circumstances.* Commonwealth guidelines for good regulation suggest that regulation that promotes broad outcomes rather than prescribing means of achieving those outcomes may be less likely to interfere with market innovation and development; and
- *low administrative and compliance costs; transparency; and regular reviews.* Commonwealth guidelines suggest that these features should be taken into account when assessing various regulatory options.

These criteria provide broad guidelines only — it is highly unlikely that any regulatory approach will fulfil all requirements. Nonetheless, they provide a useful and consistent checklist against which to assess relevant options for regulating international liner cargo shipping services and liner conferences in particular.

Some participants to this inquiry (see ACCC, sub. DR36 and Department of the Treasury, sub. DR35) argue that the paramount objective in this inquiry should be to ensure consistent application of domestic competition laws. For example, the Department of the Treasury states that:

> … the first concern is to seek liner shipping regulation which complies with the domestic competition framework. (sub. DR35, p. 18)

The Commission does not agree that uniform application of domestic competition laws should be the principal objective of regulation of international liner shipping. As stipulated in the terms of reference to this inquiry (which are based on CPA principles), the ultimate objective must be a regulatory regime which best serves the national interest.

The terms of reference also require the Commission to take into account compatibility of Australian regulation with international regulation. Of course, uniform application of domestic competition law may be desirable if it enhances outcomes for Australian shippers. This possibility is explored in chapter 7.

The Commision also is required to have regard to the effect of regulatory options on economic and regional development and the competitiveness of business including small business.

4 Current regulation of international liner shipping

This chapter briefly examines recent reviews of Australian regulation of shipping conferences, considers the current state of regulation in Australia and the rationale for this approach, outlines competition law applying to shipping in several major overseas economies and, finally, discusses relevant international agreements.

4.1 Regulation of conferences in Australia

The earliest conferences were formed in the years immediately after the opening of the Suez Canal in 1869. The opening of the canal significantly reduced the length and time of the voyage from Europe to Asia, creating substantial excess capacity in shipping markets. Excess capacity not only led to intense competition, rate cutting and an erosion of profit margins, but to unpredictable sailing schedules as owners kept vessels on berth in an attempt to gain additional cargo.

The UK–Calcutta Conference, established in 1875, is generally considered the first successful conference agreement. Thereafter, shipping conferences were introduced on all major trade routes, including those linking Australia with Europe, North America, Asia and New Zealand. At times, notably in the 1950s and 1960s, conferences appear to have possessed some degree of market power in Australian trades. However, since the introduction of containerisation in the 1960s, liner shipping has undergone significant technological and organisational changes. Amongst these was a change in the institutional and competitive structure of liner shipping, effectively eroding the market power of conferences, coupled with a reduction in the market share held by conferences in Australian liner trades.

Over the last 20 years, there have been three major reviews of competition regulation for liner shipping in Australia, only one of which resulted in legislative changes being passed (see box 4.1). Common themes running through these inquiries have been a recognition of the potential cost-saving and service benefits to Australian shippers from conferences, the need to promote countervailing power of shippers, a desire to encourage commercial resolution of issues where possible, some extension of the powers of shippers on inward trades (to the extent considered feasible) and continued provisions for protection to Australian flag shipping

(provided that it was efficient). Both the 1986 and 1993 inquiries favoured separate bodies being established to oversee liner shipping regulation.

Box 4.1 **Recent reviews of Part X**

There has been a long history of Commonwealth regulation providing shipping conferences with conditional exemption from competition legislation. This continued when the Trade Practices Act (TPA) was introduced in 1965, with overseas liner shipping excluded as a special case until new provisions (Part XA) were inserted in 1966. These allowed exemptions from all of the competition rules in Part IV of the TPA for all registered conference agreements, in return for undertakings to enter into negotiations and provide information to the designated shipper body. Conference agreements could be disallowed if conferences or their members failed to comply with an undertaking or appoint a local agent, or if they failed to have due regard for the need for services to be efficient, economical and adequate, or if they hindered the entry of an Australian flag carrier. In 1972 the Australian Shippers' Council was formed as the designated shipper body under the TPA. It was divided into ten groups for each regional conference. Previously there had been separate shipper bodies for each conference. The Council ceased operation in 1989 after Commonwealth Government funding was withdrawn. The newly established Australian Peak Shippers Association became the designated peak shipper body in 1990.

While Part X was not changed significantly until 1989, the extension of the TPA in 1974 to cover a wider range of anti-competitive practices effectively meant that the exemption granted to conferences became more extensive.

In 1977 the Minister for Transport established a departmental study group to review overseas cargo shipping legislation. This review (Grigor Report) observed a number of weaknesses in the legislative backing for shippers in their negotiations with conferences, but no amendments were made to Part X.

In 1984 the Commonwealth Government established an Industry Task Force to review overseas liner shipping and its regulation. The Task Force (which reported in 1986) recommended a separate Shipping Act granting continued allowance of cooperative agreements between carriers but with stronger pro-competitive safeguards on agreements, prohibition of predatory and discriminatory practices and establishment of a Shipping Industry Tribunal to consider conference agreements and complaints made about them.

(Continued next page)

Box 4.1 **(Continued)**

This report provided the basis for amendments to Part X in 1989, providing greater regulatory oversight of carriers while improving the bargaining power of shippers. To the extent that the regulatory regime is able to influence behaviour and outcomes, these changes generally improved the relative negotiating position of shippers. The exemption of conferences from Part IV was limited to sections 45 and 47. In particular the misuse of market power provisions (section 46) became applicable to inward and outward conferences. In addition price discrimination by conferences between similarly placed exporters was prohibited. Complementing these changes, shippers were given powers to require conferences to negotiate minimum service levels (in addition to the traditional terms and conditions for shipping).

In 1993 the Commonwealth Government commissioned a further inquiry into Part X (Brazil Review), in particular to examine how well the regulation had achieved its objectives and the possibility of removal or modification to Part X exemptions for carriers (for example, banning of pooling, extension of provisions to inward shipping). The Brazil Review recommendations included retention of Part X with a series of proposed amendments particularly with a view to enhancing shippers' positions. In particular it argued that the provisions available to shippers be extended to importers, that the Commonwealth Government provide funding to a peak shipper body and that the Minister have powers to refer accords and discussion agreements to a proposed Liner Cargo Shipping Authority. The review recommended establishment of the Liner Cargo Shipping Authority to resolve disputes between carriers and shippers and take over the role of competition regulator under Part X.

While Part X was retained, the Government did not implement any of the other recommendations and the 1989 provisions remain in force.

Source: Brazil *et al* (1993); DoT (1986).

4.2 Objectives and key provisions of Part X

The underlying objectives of the current Part X are akin to those in earlier Australian competition regulation applying to liner shipping and those underlying similar legislation overseas. Governments are seeking to establish a regulatory regime which captures the cost economies and enhanced service possibilities provided by conferences, while preventing abuse of the potential increase in market power given to carriers by allowing explicit price, service and capacity agreements between them. If successful, such a regime would see cost savings and service improvements passed on to shippers. It is important to recognise that for many Australian shippers, quality and reliability of service may be considerably more important than modest savings in ocean freight rates.

In addition to this objective focussed on efficiency, Part X also aims to foster stable access to outward shipping in all states and territories and to prevent conferences or carriers with market power from unreasonably limiting participation of efficient Australian flag shipping in outward trades. In drafting Part X, successive governments also have been mindful to avoid conflicts with overseas competition policy regimes for shipping.

In pursuing these objectives, Part X gives carriers (on both inward and outward routes) limited exemption from trade practices laws which could otherwise severely limit their ability to form conferences, discussion agreements and other forms of cooperation. These exemptions enable carriers to cooperate in the provision of shipping services and discuss and reach agreements on capacity, services and prices that they offer jointly.

In return for these limited exemptions, Part X imposes certain information requirements on outward conferences and gives rights and powers to shipper bodies aimed at improving their countervailing power and limiting conference carriers' ability to exploit any additional market power that Part X may have given them. In addition, investigatory roles are provided for the Australian Competition and Consumer Commission (ACCC) and, to a lesser extent, the Australian Competition Tribunal (ACT). Delegated representatives of the Minister for Transport ('the Minister') have rights to receive certain information from conferences and to attend negotiations between shippers and conferences. The Minister has the power to make orders regarding the registration of conference agreements considered to be in breach of part X requirements and against any outward carriers breaking certain provisions of Part X. Some of the key provisions of Part X are outlined below in more detail.

Objectives

The three specific principal objects (all relating to outward shipping) prescribed in Part X are:

- to ensure that Australian exporters have continued access to outward liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive;
- to promote conditions in the international liner cargo shipping industry that encourage stable access to export markets for exporters in all States and Territories; and
- to ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outward liner cargo shipping trade.

Exemptions

The Act provides registered liner cargo shipping conference agreements with exemptions from section 45 (arrangements restricting dealings or affecting competition) and, with the exception of third-line forcing, section 47 (exclusive dealing) of the TPA. These exemptions only relate to certain activities under a conference agreement, such as fixing freight rates, pooling of earnings, losses and traffic, restriction of cargo quantities carried and restriction of new entrants to the agreement. Loyalty agreements also are specifically given these exemptions, although a shipper has the option to remove this exemption in relation to its own dealings with conferences. Other provisions of the conference agreement will also be exempt if they are necessary for its effective operation and are of overall benefit to Australian exporters. Inward shipping services are provided with a blanket exemption from sections 45 and 47, with the exception of third-line forcing.

Since 1989, conferences have not been exempt from the operation of section 46 (misuse of market power). No actions have been brought against shipping lines under this section.[1]

Part X defines conferences very broadly as an unincorporated association of two or more ocean carriers carrying on two or more businesses each of which includes, or is proposed to include, the provision of liner cargo shipping services. This approach restricts legal arguments about what forms of cooperation constitute a conference under Part X. Carriers therefore have registered many different agreements, such as consortia and joint service agreements under Part X. The shipping industry would not consider such arrangements to be conferences in the traditional sense.

Shippers' rights

Shippers (through shipper bodies) are given certain rights in dealing with conferences, which they could not generally expect to obtain in normal commercial negotiations. Allowing carriers to form conferences that may otherwise be illegal enables these requirements to be imposed as a *quid pro quo* — if conferences do not wish to meet the requirements they would then come under the ambit of the general provisions of the TPA. In addition, division 9 places certain requirements on non-conference operators found by the ACT to possess substantial market power on an

1 It is possible that the mere threat of section 46 might have been sufficient to deter abuses of market power, although the strong competition evident in Australian shipping markets in recent years is unlikely to have provided any significant market power for carriers.

outward trade route,[2] to negotiate with designated shipper bodies. These operators remain subject to all provisions of the TPA. Hence for operators in this category, the existence of Part X potentially increases the extent of regulation faced. These provisions are discussed further below and in chapter 8.

In a number of ways, there is an attempt to provide countervailing power to outward shippers in their dealings with conferences. Part X gives shippers the right to cooperate in negotiating with shipping conferences. The Minister may declare an association a designated peak shipper body if it represents the general interests of shippers on outward liner cargo trades. Currently the designated peak body is the Australian Peak Shippers Association (APSA). If required by the peak shipper body, conferences must negotiate concerning minimum levels of shipping services to be provided (s.10.29). Similarly, section 10.41 requires conference members to negotiate with a designated shipper body on 'negotiable' shipping arrangements such as freight rates, frequency of sailings and ports of call.

An association representing the interests of shippers in particular products or trades, or from a particular region, may be declared by the Minister as a 'designated secondary shipper body'. Currently twelve such secondary bodies are registered. While they do not have the automatic right to require conferences to negotiate with them, the Registrar of Liner Shipping may grant this privilege for particular agreements. In practice, APSA often has delegated its negotiating rights to secondary shipper bodies.

Secondary shipper bodies are given the right to require both conference members, and non-conference lines with substantial market power, to negotiate on freight rates, terms and conditions of carriage and levels of service. They are given exemption from sections 45 and 47 for the purposes of negotiating with carriers and entering into loyalty agreements with them. Critically, there is no requirement for negotiations to be successful, hence shippers are not provided with a power of veto. But as noted below, shippers (including shipper bodies) may complain to the Minister if they believe that the outcome of negotiations, or the content or operation of a conference agreement, breaches Part X. Shippers and shipper bodies have similar rights with respect to breaches committed by individual carriers with substantial market power.

Part X also gives shippers the right to obtain from conference carriers information reasonably necessary for negotiations. It also allows an authorised officer of the Department of Transport to attend negotiations between conferences and shippers and to present suggestions which conferences are obliged to consider, but need not

2 A carrier may agree, without an ACT report, to the Minister registering it as having substantial market power under division 9.

accept. Conferences and carriers found to have substantial market power are required to give at least 30 days notice to the relevant shipper bodies, of changes in matters such as freight rates or service levels. This provides the opportunity for shippers to activate the negotiation process and gives them some time to adjust their own operations.

Further, section 10.06 requires agreements between outward conferences and shippers to provide expressly for questions arising under the agreement to be determined in Australia under Australian law, unless otherwise agreed by the parties and the Minister. This provision gives protection to shippers from having unfavourable jurisdictions imposed upon them in dealing with their contracts with carriers. Further, all ocean carriers must be represented in Australia by a registered agent for the purposes of the Act.

The extent to which the above provisions have delivered some additional negotiating advantage or additional market power to Australian shippers is discussed further in chapter 5.

The penalty provisions of Part X (discussed below) potentially offer some additional support to shippers in negotiations and ongoing dealings with conferences and could allow action against a conference for matters such as excessive pricing or failure to provide adequate services.[3]

Investigations and penalties for conferences

At the request of the Minister, or of a party affected by the operation of a registered conference agreement, the ACCC may investigate whether a conference agreement contravenes either the minimum registration requirements contained in sections 10.06 to 10.08, or the other obligations of Part X. These include failure to negotiate with designated shipper bodies and failing to have due regard for the need for shipping services to be efficient and economical and of reasonable capacity and frequency to meet shippers' needs. The ACCC reports to the Minister who has the power to decide what action, if any, to take. Except in special circumstances, the Minister can act only after having received and considered the Commission's report.

The possible penalties for conference carriers found by an ACCC investigation to have breached their obligations under Part X are partial or total deregistration of the

3 Dick (1983) argued that the proposed introduction of a similar efficiency sanction in Part XA in 1966, was important in instigating the 1966 rationalisation (in consultation with the Department of Trade) of the conference to the United Kingdom and Europe, leading to a small fall in rates.

conference agreement concerned (section 10.44), hence rendering that agreement (or parts of it) liable to all provisions of the TPA.

However, there is considerable opportunity for possible breaches to be resolved by conferences agreeing to provide appropriate undertakings regarding the actions concerned. The Minister can make orders against a conference under section 10.44 only if consultations have been undertaken with the conference members. This is in line with the philosophy underlying Part X to allow, as far as possible, outcomes to be determined by commercial negotiations rather than regulatory intervention and penalties. In addition, it reflects the perceived importance of conferences in delivering shipping services and hence the desire to avoid deregistration. Chapter 8 considers the issue of possible changes to penalties for breaches of Part X.

Inward shipping

While giving inward shipping conferences the same limited competition law exemptions as conferences on export trades, Part X provides no offsetting power for Australian importers. This appears to reflect a desire to avoid conflict with regulatory regimes of other countries. In addition, conference and shipping agreements for inward trades traditionally have been made overseas between foreign exporters and carriers, thus giving only a small role to Australian importers and raising uncertainties about jurisdictional, enforcement and investigatory matters.

Thus, under Part X, Australian importers are not given the legislative right to negotiate collectively with carriers. In the import trades, the extent of legislative counterbalancing of any conference market power at present is left implicitly to the operation of competition legislation in the source country (as well as market forces). As with outward shipping, section 46 applies to inward conferences, although jurisdiction and enforcement may be more difficult. The case for giving Australian importers greater rights under Part X is considered in chapter 8.

Other provisions

In at least two ways Part X contributes to the goal of encouraging stable access to export markets for all states and territories. First, because conferences are likely to be able to provide more frequent and comprehensive services, they may be better placed to service smaller states and thinner trades than independent lines.[4] Hence allowing conferences to form, requiring them to specify minimum service levels and

4 In the case of some regional ports, however, exports may be limited to a few, seasonal commodities. In these circumstances, it is possible that niche operators will provide irregular, essentially chartered, services rather than conferences providing a scheduled liner service.

providing shippers the right to negotiate with conferences on a collective basis, may assist smaller states. Secondly, the Minister may cancel all or part of a conference agreement registered under Part X if the conference fails to provide the capacity and frequency of service reasonably required by shippers.

Part X also contains provisions for the Minister to deregister conference agreements, or make orders against non-conference carriers with substantial market power, which prevent or hinder efficient Australian flag shipping operators from engaging reasonably in outward liner cargo shipping. These provisions are discussed further in chapter 8.

Division 11 of Part X allows the Minister to order carriers (conference or other) on outward liner services, not to engage in a particular (unfair) pricing practice, if the relevant prices are less than those rates actually charged on the trades concerned by carriers not enjoying non-commercial advantages given by a government. Such pricing has to be of such a magnitude and recurring nature that it inhibits efficient and economical services being provided at a capacity and frequency reasonably required by shippers and also must be contrary to the national interest. In determining the national interest for division 11, section 10.67 draws particular notice to the needs of Australian exporters for adequate and competitive shipping services and the extent to which their competitors have access to the benefits of the pricing practices being examined. These provisions are discussed further in chapter 8.

The 1986 Industry Task Force (DoT 1986, pp. 111–114) recommended provisions of this nature and they were introduced as part of the 1989 amendments to Part X. They appear largely to reflect concerns about the possible impact of subsidised state-owned shipping lines on the competitiveness of Australian flag shipping and on the stability of scheduled liner conference services.

Under section 10.05, all outwards carriers are prohibited from discriminating between shippers requiring similar services, if such discrimination is likely to cause substantial lessening of competition in a market. Discrimination based on cost differences due to different origins or destinations, or types or quantities of cargo, is allowed. Similarly, price differences due to the carrier's capacity or the time at which the service is required are also allowed. These issues are examined in chapter 8.

Part X does not include a number of provisions contained in some overseas shipping regulation. It does not require publication of agreements with shippers, nor does it ban loyalty agreements or require conferences to be open. These sorts of provisions, though ostensibly in shippers' interests, might in some instances operate to lessen

the benefits of establishing conferences and stifle potential competition between conference members.

4.3 Rationale for current regulation

As noted in section 4.2, the provisions of Part X represent a delicate balance between allowing carriers to cooperate in order to achieve scale and scope economies, while facilitating countervailing shipper power via negotiation and information rights. Particularly on relatively thin trades, achievement of the desired frequency and quality of service may require either cooperation between a number of carriers or provision of services by only one or perhaps two lines. Conferences also may generate cost savings by allowing better regional and/or global network economies for carriers than if a similar service were provided by fewer carriers. These issues are discussed further in chapter 3 and appendix B.

As discussed in section 4.4 below, different countries have developed a variety of regulatory regimes for the shipping industry, based on this broad model.

Liner shipping services used by Australian exporters and importers are almost totally foreign owned and, with the exception of port and stevedoring operations within Australia, utilise foreign resources almost exclusively. Hence, of themselves, cost savings generated by conferences provide no benefit to the Australian economy, while the potential for uncompetitive pricing may have increased by allowing ship owners to cooperate. In the extreme, if conferences provide carriers with substantially increased market power they could result in prices increasing despite costs being lowered. Only if cost savings are translated into lower freight rates and/or better service for shippers will the Australian economy gain from the cost advantages of conferences.

Hence if the competitive freight rate objectives of Part X are to be achieved, it is crucial that offsetting forces exist to channel some or all of the cost savings into lower shipping charges. These may be the existing market power of shippers, competition from carriers outside the conference, competition from within the conference (for example, conference lines undercutting each other) or provisions in Part X which operate to improve the operations of any of these factors. If competition within conferences and between conferences and non-conference lines were guaranteed to generate efficient market outcomes, cost savings could be expected to be passed on to Australian shippers and the efficiency objectives of Part X would need no special mechanisms to achieve these benefits for Australia.

However, Part X takes the approach that providing the special privileges to Australian shippers noted above in section 4.2, will further increase the likelihood of achieving beneficial outcomes from allowing conferences.

Part X also explicitly seeks to promote access to international liner shipping for exports from all states and territories. This objective relates to perceptions of fairness or equity between regions and potentially involves both uniform rates and access to services. Uniform pan-Australian freight rates were a common feature of liner cargo shipping for many years, although Part X has never imposed them on the shipping industry. However, as with other industries where competition has increased, Australia-wide rates now are far less prevalent in shipping. Availability of frequent and regular services is the other part of this objective and is of fundamental importance to regional exporters.

Part X further aims to defend the position of efficient Australian flag shipping against unreasonable behaviour of conferences or independent carriers with substantial market power. Traditionally, such provisions have either reflected concern that foreign dominated cartels may discriminate unfairly against efficient Australian carriers, or have aimed to provide an information source on international shipping costs, presumably to assist Australian shippers in negotiations with conferences or to maintain conference rates at efficient levels. The significant fall in the role of Australian flag shipping in recent years has reduced the relevance of these objectives.

The difficulty of such subsidiary rationales for Part X is the possible conflict with the primary aim for services of the quality that shippers require at internationally competitive freight rates. If Australian flag shipping is not cost competitive with overseas carriers, any efforts to enshrine its place in conferences will tend to lead to the maintenance of excessive freight rates and/or losses for the Australian flag carrier. Similarly, any attempt to coerce conferences to adhere to uniform rates or increase service levels for smaller or outlying ports must generate higher charges or poorer service for other shippers.

4.4 International regulation

Block exemptions to competition rules for international liner shipping, similar to Part X, are provided by a number of major trading economies. In most of these countries exemptions are subject to certain conditions and may apply differently to inward and outward bound services. There are some economies, most notably in Asia, which do not in any way regulate liner shipping activities — liner shipping is completely and unconditionally exempt from competition rules. There is no

significant trading economy which does not exempt, either fully or conditionally, liner shipping from its general competition rules. According to Meyrick & Associates (sub. 5, p. i), in all countries in which foreign carriers are free to participate in the carriage of liner cargo, carriers are free to form conferences.

Recent reviews of shipping legislation have taken place in a number of economies. In the United States and the European Union the role of conferences in providing timely and cost effective liner shipping services has been implicitly acknowledged and exemptions for conferences from competition rules have been maintained.

Canada also has commenced a review of its regulatory framework, in part in response to recent regulatory changes in the United States. The interdependence of the two economies has meant that Canadian shipping regulation has been closely aligned with that in the United States. A consultation paper issued in mid-1999 (Transport Canada 1999) canvassed a number of options ranging from maintaining the existing Act through to abolition of competition policy exemptions for conferences. Responses from interested parties are due by the end of September 1999.

This section briefly outlines features of regulatory arrangements for liner shipping in some of Australia's major trading partners as well as relevant international agreements. Further details of regulation in the United States, European Union, Canada and New Zealand are provided in appendix F.

United States

Prior to the 1984 Shipping Act, US liner trades were regulated under the 1916 Shipping Act. The regulatory regime has been characterised as interventionist, with the Federal Maritime Commission (FMC) playing a major role in approving and policing shipping agreements and anti-competitive practices. Under US law, ocean common carriers[5] are exempt from US antitrust laws (subject to prescribed conditions) so far as the setting of common rates is concerned. Ocean common carriers are also allowed to enter into agreements to offer joint services and/or to pool their ship capacity.

The passage of the *Shipping Act (1984)* effectively reduced the level of government intervention in liner shipping activities (PSA 1993, p. 13). The 1984 Act applied to agreements by or among ocean common carriers to:

- discuss, fix or regulate transportation rates;

5 An ocean common carrier provides transportation by water of passengers or cargo between the United States and a foreign country for compensation.

- pool or apportion traffic, revenues, earnings or losses;
- allot ports or restrict or otherwise regulate the number and character of sailings between ports;
- limit or regulate the volume or character of cargo or passenger traffic to be carried;
- engage in exclusive, preferential or cooperative working arrangements;
- control, regulate, or prevent competition in international ocean transportation; and
- regulate or prohibit their use of service contracts.

Under the 1984 Act, shipowners retained the power to form open (but not closed) conferences,[6] with shippers being permitted to join associations to protect them from potential exploitation by conferences possessing some market power. Shipowner agreements faced a 'public interest' test[7] and agreements were required to:

- include a self-policing mechanism;
- be open to new members;
- include a mechanism for handling shipper complaints;
- allow independent rate action (conferences must allow their members to charge rates which differ from conference rates on giving not more than ten days notice); and
- file details of service contracts and tariffs with the FMC.

The Act streamlined the approval process for conferences. While the FMC was still required to scrutinise conference agreements, its power to disallow such agreements was curtailed.

The *Ocean Shipping Reform Act 1998*, which became effective on 1 May 1999, is technically an amendment to the 1984 Act, and changes the regulatory environment in significant ways. In particular, it allows individual shipping lines belonging to one or more rate-making conferences to sign contracts with individual customers without making the same rates or conditions available to all other, similarly-situated

6 Any carrier can join an open conference on the same terms and conditions that apply to all members. Under the 1984 Shipping Act members are free to exit the conference 'upon reasonable notice' without penalty.

7 Under this public interest test a shipowner agreement must not be judged likely to 'produce an unreasonable reduction in transportation service or an unreasonable increase in transportation costs'.

customers. Details of freight rates, service commitments, liquidated damages for non-performance (as well as origin and destination in the case of through intermodal movements) will be kept confidential. However, details of origin and destination by port range, the commodity or commodities involved, the minimum volume, as well as the duration of the contract must be made public. The Act prevents conferences from retaliating against members who contract individually.

After 1 May 1999 conference rates no longer have to be filed with the FMC, though they must be available to both the public and the FMC. The Act reduces the notice period for independent action by conference members from ten to five days.

These changes are intended to encourage both intra-conference competition and competition between conference members and independent lines operating to and from the United States. As such, they bring US liner shipping regulation[8] more in line with the existing Australian law.

The major differences between the US regulatory regime for liner shipping and Australia's Part X are that under US law:

- both inward and outward trade are covered by the exemptions and obligations;
- conferences must be open, so that any ocean carrier can join a conference on the same terms and conditions that apply to all members; and
- conference members have the legislated 'right' of independent action, which involves offering a freight rate different from the conference rate for a particular commodity, while remaining a conference member.

Europe

Member countries of the European Union have developed, and are continuing to refine, a coordinated approach to the regulation of liner shipping.

While Article 85 of the Treaty of Rome prohibits restrictive agreements and practices, it allows exemptions — either on an individual or a block basis — under strictly defined conditions. Regulation 4056/86, issued in 1986, grants liner conferences on both inward and outward trades a block exemption from the provisions of Article 85, providing that conferences adhere to one condition and five obligations. The condition is that a conference must not discriminate between ports

8 In May 1999, the Judiciary Committee of the House of Representatives held further hearings about the effects of the 1998 Ocean Shipping Reform Act. While the U.S. Justice Department, which has regulatory and antitrust authority, reiterated its opposition in principle to extending antitrust immunity to liner shipping, it nevertheless recognised that the 1998 Act reflected the need to balance a number of competing concerns (OECD 1999b, p. 16).

or transport users by applying different rates and conditions of carriage to the same good carried to the same area unless such differences in rates or conditions can be justified economically. The obligations relate to: consultation between conference and transport users concerning rates, conditions and quality of service; loyalty arrangements; services other than those covered by the freight charges; availability of tariffs; and notification to the Commission of awards at arbitration and of recommendations made by conciliators. (Gardner 1997, p. 318) The exemption covers the price fixing activities of liner conferences for an indefinite period.[9] While Regulation 4056/86 contains exemptions from Article 85 of the Treaty, it does not grant exemption from Article 86, which relates to abuse of a dominant position.

The European Community grants conditional exemption to consortia as well as conferences. Regulation 870/95, adopted in 1995, provides automatic exemption from Article 85 for joint service agreements (consortia) that exclude price fixing.[10] However, exemptions are available only to certain classes of consortia. Consortia having a market share of less than 30 per cent (35 per cent in the case of non-conference consortia) receive a blanket exemption from Article 85. The formation of consortia with market shares between 30 per cent (35 per cent in the case of non-conference consortia) and 50 per cent must be notified to the Commission.[11] Such block exemptions cover, *inter alia*: the coordination and/or joint fixing of sailings and the determination of ports of call; the exchange, sale or chartering of slots; the pooling of vessels; and temporary capacity adjustments (Competition Directorate 1995, p. 21). The exemptions require a 'fair share' of the benefits be passed on to users, a requirement that is considered to be met when there is effective price competition within the consortium or where consortium members are subject to actual, effective or potential competition from non-consortium lines. A forthcoming review of Regulation 870/95 will determine whether or not consortia will receive exemption beyond the year 2000 (LSS, sub. 10, p. 26).

Since the adoption of block exemptions for liner conferences there have been a number of European Commission decisions defining their scope:

9 According to Liner Shipping Services, the European Commission's Competition Directorate investigated agreements between international liner companies in 1994 and decided to retain Regulation 4056/86 (sub. 10, p. 25).

10 Consortium members that wish to fix rates jointly, but do not satisfy the conditions of Regulation 4056/86, must apply for individual exemptions (Competition Directorate 1995, p. 12).

11 An exemption will be granted unless the Commission decides, within six months of notification, to oppose it (DTRS, sub. 3, p. 17).

- inland price fixing: the Commission's stance is that conference members wishing to fix inland prices must engage in cooperation of a type that necessitates such price fixing. In the case of the Trans-Atlantic Conference Agreement (TACA), the Commission opposed the collective pricing of inland transport services. In the amended TACA tariff, rates to and from European ports are quoted collectively but members no longer quote collectively for inland transport. The Commission's decision is subject to appeal;
- capacity management: a 'capacity management' program is one under which the parties agree to withhold a proportion of the space on their vessel which might otherwise be used for the carriage of goods in a particular trade. In its Trans-Atlantic Agreement (TAA) decision, the Commission argued that the TAA capacity management program was a control mechanism aimed at reinforcing price discipline among its members. The Commission concluded that such a freeze on the use of capacity was not a traditional liner conference practice and was not envisaged when the block exemption under Regulation 4056/86 was granted; and
- service contracts[12]: one of the questions that arose in the TACA case was whether TACA joint service contracts fell within the scope of the block exemption. The Commission argued that, since TACAs joint service contracts neither appeared in nor were part of the tariff, it could not be said that the block exemption covered such contracts. (Wood 1999, pp. 17–21)

The European Commission has noted that it is not at present considering any proposal to modify or abolish the block exemption for liner conferences. Rather it is continuing to focus on its correct application and particularly on clarifying the exact scope of block exemptions (OECD 1999b, p. 3). The Productivity Commission notes that, since many of the European Commission's rulings relating to block exemptions, especially those relating to inland transport and service contracts, are the subject of appeals, the precise scope of the exemption remains to be determined.

Recent reports suggest that the European Community's Competition Directorate is developing a 'more conciliatory framework' with respect to liner shipping. Meetings between the Competition Commissioner and executives from leading carriers (the so-called 'Transition Group') have developed draft proposals confirming:

- the right of individual conference members to sign service contracts;
- the abolition of European inland price fixing by conferences;

12 A service contract is a contract between a shipper and a carrier or conference in which the shipper makes a commitment to provide a minimum quantity of cargo over a fixed time period and the conference or carrier commits to a certain freight rate and a defined service level.

- carriers to be allowed to collectively set port-to-port tariffs and to enter into port-to-port service contracts with shippers; and
- the preservation of Regulation 4056/86, granting antitrust immunity to freight conferences.

The draft proposals do not affect legal cases currently under appeal or the European Commission's forthcoming review of its block exemption on consortia (Fossey 1998b, p. 59).

New Zealand

The *Shipping Act 1987* contains the regulatory provisions for liner shipping in New Zealand. Under the Act outward liner shipping is exempt from Part II (Restrictive Trade Practices) and Part IV (Control of Prices) of the *Commerce Act 1986*, meaning liner operators on outward trades are allowed to form conferences and agree on freight rates.

The NZ Shipping Act is based on the premise that relations between shippers and carriers should be self-regulating, subject to some safeguards. These safeguards include: the ability of the Minister of Transport to hold an investigation when it appears an unfair practice is detrimental to New Zealand shippers' interests; requiring reasonable notice be given to New Zealand shippers of changes to the terms and conditions of outward shipping service contracts; and requiring proof that carriers have entered into reasonable negotiations with shippers.

There is no provision for the designation of peak or secondary shipper bodies to represent shipper interests — countervailing power is provided by the major export shippers, which are statutory marketing authorities or producer boards such as the Dairy Board, the Meat Board, the Apple and Pear Board, the Kiwifruit Marketing Board and the New Zealand Wool Board (the activities of producer boards are exempt from the Commerce Act) (DTRS, sub. 3, p. 18).

Asia

Most Asian countries provide liner conferences with a block exemption from competition rules, where they exist. Generally, there are not as many obligations or safeguards attached to the exemptions as there are in most Western countries.

Under Japan's *Maritime Transportation Law*, outward shipping agreements and tariffs filed with the Ministry of Transport are exempt from competition laws subject to certain prohibitions involving, for example, unfairness, discrimination,

unjust raising of freight rates and divergence from filed tariffs. There are no requirements that carriers consult with shippers on freight rates or conditions of service, although consultation may take place in practice (DTRS, sub. 3, pp. 18–19; Flynn 1999).

In order to further promote fair and free competition among carriers, as well as secure a stable supply of shipping services, the Japanese Government initiated a review of its exemption system in March 1998. As a result of the review, Japan has amended its *Maritime Transportation Law*. The law preserves the immunity (exemption) of conferences from antitrust law, while allowing the Ministry of Transport to issue an order for the prohibition or revision of individual agreements if it is understood that an agreement is unduly restrictive of competition (OECD 1999b, p. 12). In assessing an agreement, the Transport Minister and Fair Trade Commission must consider four criteria:

- user interests are not unduly impaired;
- no undue discrimination arises;
- participation in or withdrawal from an agreement is not unduly restricted; and
- the content of an agreement is the minimum necessary to achieve its purpose (LSS, sub. 10, p. 26; Flynn 1999; OECD 1999b, p. 12).

As well as setting stricter standards for cartel immunity, the new rules empower the Minister of Transport to request detailed information about freight levels and volumes from both conference and non-conference lines. The Minister may initiate on-the-spot inspections of ships, offices and other places used for shipping and passenger transport business. The Fair Trade Commission (the government's anti-monopoly 'watchdog') has been granted parallel authority to review the Ministry's oversight of the industry. (Flynn 1999)

Under Korean maritime law a block exemption is granted to liner shipping agreements notified to the Korea Maritime and Port Administration, subject to conditions regarding unfair provisions in agreements and hindering Korean shipping. Article 29 of the Maritime Transport Act provides that 'a person registered as an ocean-going transportation business may enter into a contract concerning freight rates, vessel allocation, cargo transport and other transport conditions and other joint activities' (OECD 1999b, p. 14). The Korean Government reserves the right to take action to suspend such agreements or alter their provisions (DTRS, sub. 3, p. 19).

Thailand's shipping legislation gives the government power to stipulate the proportion of exports and imports to be carried in national flag vessels and provides incentives for shippers to use national flag ships. However, in practice, the Thai

government has not used its cargo reservation powers and has limited its promotion of the national fleet (DoT 1986, p. 75). A recent article in the *Daily Commercial News* (Porter 1999) stated that Thailand currently is considering curtailing conference practices.

Reflecting its role as a transport hub, Singapore is essentially non-interventionist in the area of international liner shipping and promotes a free-trade environment. It does not regulate liner shipping in any way, which in essence means liner shipping is completely and unconditionally exempt from competition rules.

Issues of comity

Compatibility between Australia and its major trading partners of regulatory regimes for liner shipping is an issue the Commission has been directed to address in the inquiry terms of reference. A number of participants in this inquiry have raised the need for compatibility between regulatory regimes for liner shipping. For example, P&O Nedlloyd stated:

> The more uniformity or, at least, compatibility between types of regulatory regimes in the world, the more world trade growth will be facilitated and the easier it will be to meet the challenges posed by changing trade patterns due to globalisation. (sub. 6, p. 2)

One of the objectives of the US *Shipping Act of 1984* (and the subsequent Reform Act) is to provide regulation 'insofar as possible, in harmony with, and responsive to, international liner shipping practices' (section 2(2) of the Act).

A central theme in the Brazil Review is that unilateral measures by Australia to 'eliminate or reduce the market power of international ocean carriers are unlikely to be of much effect' (Brazil *et al* 1993, p. xv) because conference arrangements would then be made in another less restrictive jurisdiction. This concern about the limited effectiveness of unilateral reform also has influenced policies in other economies. For example, a 1992 review of the Canadian transport system objected to the conference system, but nevertheless recommended against unilateral action by Canada to repeal conference exemptions, emphasising the risk that conferences simply would bypass Canadian ports (Brazil *et al* 1993, p. 47).

Australia is party to a number of international shipping agreements which may affect the level and extent of action that can be taken in attempting to change liner shipping legislation. Some relevant agreements are discussed below. Developments in the World Trade Organisation (WTO) under the General Agreement on Trade in Services (GATS) also are discussed.

4.5 International agreements

In 1986 a Task Force under the Department of Transport stated in its *Liner Shipping Report* that:

> As with most forms of international activity, the conduct of international shipping is governed by a number of international conventions. The degree of international acceptance of these conventions, however, varies. While conventions dealing with standards and rules for ship safety and freedom of navigation are widely accepted, there are no universally applicable international arrangements for economic regulations of shipping. (DoT 1986, p. 63)

It appears this is still the case.

Discussed below are some of the main international conventions covering international liner shipping, although agreements relating to maritime safety and technical matters are not presented.

Convention on the International Regime of Maritime Ports (1923)

Australia is a signatory to the Convention on the International Regime of Maritime Ports. Under the terms of the Convention a contracting state is required to treat vessels of other contracting states on the same basis as its own vessels with respect to freedom of access to ports, use of ports and use of other navigational and commercial operations. In other words, any shipping operator should be able to present their vessels for business in a foreign port and expect (and receive) equal treatment to national ship operators. The United States, Russia and a range of other countries, some of which are important trading partners of Australia, are not signatories to the Convention (DoT 1986, p. 63).

United Nations Convention on a Code of Conduct for Liner Conferences (1972)

Australia is not a signatory to this Code, which was adopted in April 1974 and entered into force in October 1983. The Code was developed partly as a result of developing countries' concerns about the refusal by conferences, dominated by lines from the developed countries, to admit new shipping lines from the developing countries (Brittan 1992). Hence, most of the signatory countries are developing countries. The United States, Canada, New Zealand, Japan and European countries have not acceded to the Code (DoT 1986, pp. 65–66).

The Code applies only to liner shipping by conferences in trades between contracting states (DoT 1986, p. 65). In the Code it is stated that there should be equal access of the national shipping lines of two countries to the traffic generated by their trade and a 'significant' proportion of that traffic should be carried by third country flagged vessels, such that there is approximately a 40:40:20 cargo sharing rule (IAC 1989a, p. 374).

Whilst Australia does not participate in such prescriptive shipping arrangements, there are provisions in Part X of the TPA to facilitate the participation of efficient national flag shipping operators in Australian trades.

OECD Common Principles of Shipping Policy for Member Countries (1987)

In February 1987 members of the OECD adopted a common approach to the shipping industry known as the Principles of Shipping Policy for Member Countries. This non-binding policy is based on the following elements:

- the maintenance of open trades and free competitive access to international shipping operations (Principle 1);
- coordinated response to external pressure based on full consultations between member countries (Principles 5 & 6);
- recognition of government's role to preserve free competitive access and the provision of choice to shippers (Principles 9 & 11); and
- a common approach to the application of competition policy to the liner shipping sector (Principle 10).

The first review of these Common Principles took place in 1998. The Maritime Transport Committee (MTC) concluded that the Principles have served, and continue to serve, a useful function in underpinning Member countries' liberalisation of shipping policies. However, the Committee thought it necessary to consider additional principles reflecting recent maritime developments, such as multimodal transport, and agreed to complete discussion on these proposals by mid-1999 (OECD 1998a, 1998b).

OECD Conclusions on Promotion of Compatibility of Competition Policy

Recognising the fundamental importance of compatibility of liner regimes to international trade the OECD, through its MTC, has placed a priority on work to

create a common understanding among members of the need for compatibility of regimes. After comprehensive discussions, and with extensive input from its members, the MTC developed *Conclusions on Promotion of Compatibility of Competition Policy Applied to International Liner Shipping and Multimodal Operations that Include a Maritime Leg* (DTRS, sub. 3, p. 16).

The Conclusions identify the need for countries to promote compatibility of competition policies and the desirability of shipping policies that are adaptable to changing circumstances. Other issues include the need for: efficient and fair competition; regular evaluation of liner shipping regulation; and consultation between member countries when conducting such reviews, with the aim of promoting compatibility and economic efficiency (DTRS, sub. 3, pp. 16–17).

A recent discussion document on regulatory reform, prepared by consultants for the OECD Secretariat to the Maritime Transport Committee (OECD 1999a), suggested that partial withdrawal of blanket exemptions for conference activity might warrant further consideration by the Committee. However, when asked to comment on the discussion document's recommendations, several OECD members — including Finland, Germany, Japan, Korea, the Netherlands and the US — either rejected the proposal outright or called for further study of its long-term effects on trade and the shipping industry (OECD 1999b).

As well as criticising the consultant's report for failing to consider what 'efficiency-enhancing benefits conferences might yield', the United States noted that 'antitrust immunity for price-setting agreements has not inhibited new entrants from competing in the market. Nor has antitrust immunity slowed the pace of technical innovation.' (OECD 1999b, p. 18).

Similarly, Japan noted that:

> The fundamental goal of regulatory reform should not merely be to promote competition but rather that it must also ensure the stable supply and sound development of ocean-going services which satisfy shippers' demands. (OECD 1999b, p. 9)

Further, Japan argues that conferences should not be subject to specific approval by competition authorities:

> Considering the fact that the potential for abuse of market power is disproportionate to the degree of regulation being proposed, we should not impose such a burden on shipping carriers. Bringing about such bureaucratic deterrent and uncertainty is far from the aim of the regulatory reform. (OECD 1999b, pp. 12–13)

Matters related to the World Trade Organisation (and GATS)

The WTO has identified links between competition policy and trade policy as key issues on the multilateral trade liberalisation agenda (WTO 1997). Each of the 132 WTO members are bound by several general obligations or disciplines that apply across all sectors. There are two key obligations, to provide market access and national treatment for foreign service suppliers, which apply only to those sectors a member chooses to list in its schedule of specific commitments. Only 36 members (including Australia) listed maritime transport services in their schedules of commitments. The rest of the members, including the United States and the European Union, have not committed to meet the market access and national treatment obligations for maritime transport services.

The sensitivity of maritime transport issues is reflected in the failed attempts to negotiate a maritime transport agreement in the most recent round of GATS negotiations. Along with basic telecommunications and financial services, maritime transport services were singled out for specific negotiations, which were to take place after the completion of the general GATS negotiations. While specific agreements subsequently were negotiated for basic telecommunications and financial services, similar progress was not made for maritime transport (Ruggiero 1998). The next set of services negotiations is required to commence no later than 1 January 2000, although as yet it is unclear whether maritime transport services will be discussed at the negotiations.

Zerby (sub. 7, p. 11) considers that, in view of the upcoming resumption of talks on international liner shipping services as part of the GATS, it is important Australia avoids 'regulatory changes that are likely to be incompatible with a possible multilateral system of monitoring and control'.

5 Performance of liner shipping

In this chapter, the performance of liner shipping services to and from Australia is evaluated. In particular, the performance of conference and non-conference services is compared on Australia's four major trade routes.

5.1 Services to Australian shippers

In this section, the competitiveness of liner shipping freight rates and shipping service levels to Australia — including frequency, capacity, transit times, ports of call and reliability — are examined.

Freight rates

Freight rates for conference and non-conference liner shipping services on most major Australian trade routes have declined significantly during the 1990s (see section 2.2 for general trends in freight rates on Australian trades and section 5.2 for more detailed freight rate data for specific trades). These general trends are illustrated by various freight rates cited in industry publications (*Daily Commercial News*, various; *Lloyd's List Daily Commercial News*, various), for example:

- rates from Hong Kong to Australia declined from US$1000–1100 per TEU in 1993 to US$550–600 per TEU in 1999;
- conference rates from Korea to Australia declined from US$1250 per TEU in October 1996 to US$900 per TEU in October 1997;
- conference reefer rates for meat from Australia to Japan/Korea declined from A$4500 per TEU in 1996 to A$3000 per TEU in 1998;
- freight rates from Australia to Singapore declined from A$1400 per TEU in early 1995 to A$1000–1100 per TEU in early 1997 (prior to the Asian financial crisis), and as low as A$450 per TEU in April 1998; and
- freight rates from Europe to Australia have declined from A$1900–2200 per TEU in 1993 to A$1300 per TEU in 1998.[1]

1 Freight rates cited are nominal freight rates. Real rate reductions therefore are considerably greater.

The extent of the decline in rates varies between trades. Falls in rates to South-East Asia have been amplified by the recent economic downturn in that region. Nonetheless, there have been significant rate falls on all Australian trades, including thinner trades such as Australia–Europe and Australia–North America.

Freight rates in Australian trades have been affected by a range of factors. For example, competitive transhipment rates for Europe–Australia cargo routed via Singapore reflect surplus capacity and intense competition in the Europe–Far-East trade, stemming in part from the economic downturn in Asia, as well as the current surplus capacity and low freight rates between South-East Asia and Australia. Whilst freight rates to and from Asia undoubtedly have been affected by that region's economic problems, excess capacity in the container shipping market — a product of the relatively high level of ship construction and low rate of scrapping — appears unlikely to disappear in the near future. While freight rates are unlikely to remain at the exceptionally low levels recorded in 1999, the Commission expects rates to remain reasonably low for the foreseeable future.

Discussions with industry participants, evidence presented to the current inquiry, as well as evidence available from the shipping press suggest that, on average, the difference between conference and non-conference rates has narrowed since 1993. The Brazil Review (1993) suggested that conference rates in the Australian trades typically were ten to fifteen per cent higher than non-conference rates. This may not have been the case at all times and in all trades.[2]

Current freight rate differentials reflect the level of service provided. For example, the Wool Commodity Group, responsible for negotiating freight rates in the European trade on behalf of wool exporters and European importers, agreed a 1998-99 season rate of A$1900 per TEU with Maersk for a transhipment service via Singapore, while rates for direct services of A$2122 per TEU and A$2055 per TEU were agreed with the AELA conference and MSC (an independent operator) respectively (DCN, 24 July 1998, p. 1).

Liner Shipping Services suggested:

> Unlike the situation in 1993, independent operators and Conference operators providing competitive transhipment services now set rates at times above, at or below the rates set by a Conference in a specific geographic trade area, depending upon their service capability. In other words, an independent shipowner may have a faster service via transhipment or direct to a port in Japan from say Sydney for which he should achieve a premium, but on the other hand there may be a number of cases where he cannot

2 For example, Federal Maritime Commission tariff data suggest that non-conference freight rates for a range of commodities shipped from Australia to North America varied from 90–100 per cent of conference rates over the period 1986 to 1990.

> compete with the Conference so readily in terms of service requirements and would therefore need to offer a discount. (sub. 10, p. 31)

This view is supported by the Department of Transport and Regional Services:

> Recent discussions the Department has had with exporters indicate that there is now very little difference between freight rates charged by conference and non-conference carriers. (sub. 3, p. 14)

Whilst it can be shown that freight rates in the Australian trades have fallen, it is very difficult to assess the international competitiveness of freight rates to and from Australia for a number of reasons, including varying terms and conditions of carriage, the confidential nature of negotiated freight rates and difficulties in finding suitable trades with which to compare Australia's long, thin trades and its cargo mixes and volumes (Brazil *et al* 1993). Indeed, for these reasons, international comparisons of freight rates can be of limited value, and, therefore, the Commission has not attempted to prepare such comparisons. Liner Shipping Services (sub. 10, p. 13), while noting difficulties in comparing rates between trades, submitted international comparisons of 1999 freight rates to Europe for three commodities. These suggest that Australian per kilometre rates are internationally competitive, but the data may be skewed by the impact of fixed costs such as terminal handling charges.

Most participants in this inquiry, including representatives of shippers and shipping lines, argue that freight rates in the major Australian trades are internationally competitive. No participant expressed a contrary view.

For example, according to APSA:

> Taking into consideration the scale of Australia's liner shipping task and the absence of economies of scale in the size of vessels in Australia's export trades … rates are generally competitive. (sub. 11, p. 12)

The Queensland Government commented that 'ocean freight rates in the Australian trade are low by international standards.' (sub. DR38, p. 2)

In particular, participants have mentioned the role of competition from independent operators in ensuring lower rates. In this vein, APSA commented:

> Under Part X Conferences can fix or regulate freight rates only to the extent that the market will allow. No longer do Conferences dominate the market and the extent to which shipping Conferences have effective control over the setting of rates and conditions has been significantly diminished. (sub. 11, p. 15)

Interlaine, a European Union wool industry body which, in conjunction with Australian exporters, negotiates with carriers via the Wool Commodity Group, stated:

> Ocean freight rates … for wool have been considerably influenced by the presence of independent carriers on the Australian waterfront. (sub. 2, p. 3)

Liner Shipping Services also submitted:

> Australia has a highly competitive shipping market, with few barriers to entry or exit, and shippers enjoy extremely competitive freight rates which must rank amongst the lowest in the world, despite the limited size of the market, high internal costs, e.g. port charges, the distance of Australia from its major trading partners, and the frequency of service which several of its export commodities demand. (sub. 10, p. 36)

And:

> For a number of years now the competitive element in the marketplace has been a greater determinant than any other in terms of setting freight rates … (LSS, sub. 10, p. 32)

The Department of Transport and Regional Services supported this view:

> In real terms, liner freight rates are significantly lower now than ten years ago and the competition from non-conference operators, and different conferences in the same trade, has increased. (sub. 3, p. 26)

Of course, lower freight rates, of themselves, do not necessarily imply that liner shipping markets are competitive (in the sense that conferences cannot earn excess profits).[3] That profitability of liner shipping companies at a global level also appears to be low (see chapter 2, section 2.1), provides some indication that freight rates do not exceed costs. However, low profitability may be the result of technical inefficiency.

The Commission sought further information on the profitability of liner shipping on Australian trades in its Position Paper and by directly approaching shippers and shipping operators. Confidential data was submitted to the Commission by several carriers on Australian trades, which indicated that these carriers — including conference operators — have incurred significant losses in recent years. Such estimates, however, are sensitive to allocation of non-trade specific costs. The Commission also developed a model of liner shipping costs and revenues on the South-East Asian trade (see chapter 6, figure 6.1 and appendix E), which indicates that costs have fallen significantly less than prices and revenue. While this model is

3 Given high fixed costs, and decreasing average costs, the competitive ideal where price equals marginal cost will not be a feasible, stable outcome in liner shipping (see appendix B).

illustrative only, applying to a hypothetical vessel operating on the South-East Asian trade, the results are consistent with the evidence provided by carriers.

Service levels

The nature of many of Australia's export cargoes means that frequency, transit time, ports of call, and reliability are all important characteristics of service quality, which can, in certain circumstances (for example, 'just-in-time' manufacturing or perishable cargoes), be more important than simple price considerations. This section summarises trends in the level of service provided by liner shipping services to and from Australia. Detailed data on service levels of conference and non-conference lines operating on major Australian trade routes are presented in appendix D.

Frequency

An increase in service frequency does not of itself indicate that service levels have improved. For example, if average vessel sizes declined significantly, the level of service may be reduced even though the frequency of service has increased, since the monthly capacity available to shippers would be less and voyage duration would be longer. However, in the case of liner shipping services to Australia, both the frequency and average vessel size (see chapter 2, table 2.8) of conference and non-conference services on major routes have increased since 1993, suggesting that the level of service has improved.

The frequency of liner shipping services in all major trades increased from 1993 to 1998 — most significantly on the Europe and North-East Asia trade routes (see table 5.1). The frequency of conference services increased on all four major trade routes over the period 1993 to 1998, whilst the frequency of non-conference services increased on the Europe and North-East Asia trades, but declined on the South-East Asia trade.[4] On the Europe and North-East Asia routes the increase in frequency of non-conference services was significantly greater than the increase for conferences.

While the total frequency of non-conference voyages was greater than that of the conference lines on the Europe, North-East Asia and North America routes, conferences provide more frequent services than individual non-conference lines on all trade routes.

4 Significant changes have occurred on the South-East Asia trade over the period under review. Membership of the Trade Facilitation Agreement is different from, and significantly larger than, the conference membership in 1993.

Table 5.1 **Sailing frequency for conference and non-conference lines by trade route (voyages per month)**[a]

Trade route	*1993*			*1998*		
	Conference	*Non-conference*	*Total*	*Conference*	*Non-conference*	*Total*
Europe	9	23	32	11	36	47
North-East Asia	10	29	39	13	41	54
South-East Asia	19	17	36	28	11	39
North America[b]	9	na	na	12	16	28

a Non-conference sailing frequency includes both direct and transhipment services. **b** Data for North America are for 1999 rather than 1998.

Sources: Liner Shipping Services (sub. 10, att. C); DTRS Liner Service Sheets.

This is supported by the views of participants in this inquiry. For example, Interlaine observed:

> Non-Conference carriers have … been in a position to compete with Conference lines. They clearly cannot offer the overall service frequencies which the Conference can. On the other hand, they have an ability to take large proportions of cargo from and to those ports where they have the greatest strength. (sub. 2, p. 3)

Capacity

Capacity of itself is not an indicator of service levels. However, it provides an indication of the carriers' ability to meet shippers' demands.

In 1993, the total (reefer plus dry) average monthly capacity of conferences was higher than the total average aggregate monthly capacity of non-conference direct lines on the Europe and South-East Asia trade routes. Conferences also offered greater capacity, including reefer capacity, than any individual non-conference line on the Europe, North-East Asia and South-East Asia routes (table 5.2).

From 1993 to 1998, conference and non-conference lines increased average monthly reefer and dry capacity in almost all cases (conference reefer capacity and non-conference direct dry capacity declined on the Europe trade). For most trades, the difference between conference and non-conference service levels in terms of capacity has narrowed since 1993, although conference lines as a whole still offer a higher quality service, in terms of total and reefer capacity, than individual non-conference lines.

It is important to note that vessel capacities presented here are optimum capacities and do not take into account deadweight limitations and the fact that some of this capacity may be used for cargo from other countries such as New Zealand.

Furthermore, only a proportion of the capacity of transhipment vessels will be available to cargo on the trade in question.

Table 5.2 **Average monthly capacity on selected Australian trade routes, 1993 and 1998 (TEU)**[a]

Year	*Service type*	*Capacity type*	*Europe*	*North-East Asia*	*South-East Asia*	*North America*
1993	Conference	Reefer	5 064	3 753	3 800	4 941
		Dry	12 137	11 995	16 144	5 604
	Non-conference direct	Reefer	935	2 340	804	na
		Dry	12 552	20 054	15 355	na
	Non-conference transhipp.[b]	Reefer	1 151	913	0[c]	na
		Dry	10 196	7 715	0[c]	na
1998[d]	Conference	Reefer	4 788	4 332	5 056	5 304
		Dry	20 343	19 249	25 240	10 112
	Non-conference direct	Reefer	1 200	3 381	2 990	619
		Dry	6 800	36 289	19 470	6 132
	Non-conference transhipp.[b]	Reefer	6 256	1 908	0[c]	2 400
		Dry	29 241	11 936	0[c]	17 732
Increase	Conference	Reefer	-5	15	33	7
(%)		Dry	68	60	56	80
	Non-conference direct	Reefer	28	44	272	na
		Dry	-46	81	27	na
	Non-conference transhipp.[b]	Reefer	444	109	0[c]	na
		Dry	187	55	0[c]	na

a Vessel capacities are optimum capacities and do not take into account deadweight limitations and the fact that some of this capacity may be used for cargo from other countries. **b** This is the total capacity of transhipment vessels. Only a proportion of this capacity will be available to cargo on the trade in question. **c** All services between Australia and South-East Asian hub ports are direct rather than transhipment services. However, cargo for secondary South-East Asian destinations is transhipped at Singapore. **d** Data for North America are for 1999 rather than 1998. **na** Data not available.

Sources: Liner Shipping Services (sub. 10, att. C); DTRS Liner Service Sheets.

Foreign port coverage and transit times

Conferences serviced a wider range of foreign ports than non-conference lines on major Australian trade routes in 1993 (see tables D.12 to D.19 in appendix D). Whilst non-conference lines since have improved their port coverage, conference lines generally offer a wider range of port calls than non-conference lines. In some cases, non-conference lines offer better port coverage in particular geographical areas than conferences — for example, on the North-East Asia trade, a number of ports in China are serviced by several non-conference lines but not by ANSCON.

Conferences generally offered shorter transit times than non-conference lines on the Europe and North America trade routes in 1993. On Asian trade routes, however,

some non-conference lines had transit times comparable to those of the conference. Since 1993, non-conference lines in some cases have improved transit times. In 1999, while some non-conference lines still have significantly longer transit times than conference lines (often due to transhipment), some non-conference lines on major trade routes offer transit times comparable to those of conference members.

Australian port coverage

All major Australian ports are serviced by both conference and non-conference lines in each of the major trades (see tables D.9 and D.10 in appendix D). In the Europe, North-East Asia and South-East Asia trades, conferences currently call at more major Australian ports than most individual non-conference lines. However, in the North American trade, the conference calls at fewer major Australian ports than some non-conference lines.

Sydney, Melbourne and Brisbane are relatively well-serviced by the majority of conference and non-conference lines compared with smaller ports such as Fremantle and Adelaide. Fremantle and Adelaide tend to be better serviced by conference lines than non-conference lines on the Europe, North-East Asia and South-East Asia routes. On the North America route, Fremantle is serviced by some non-conference lines but not by the conference. Tasmanian ports are even less well-serviced by both conference and non-conference lines. A number of niche, non-conference lines also specialise in servicing smaller Australian ports — for example, Perkins operate a service from Darwin to South-East Asia and NGPL operate a service from Brisbane, Gladstone, Townsville and Darwin to North-East Asia.

The Department of the Treasury (sub. DR35, p. 9) observes that non-conference lines serve regional ports[5] to a greater extent than conference services. Closer inspection of the data reveals that a large share of exports from regional ports are not containerised liner (conference or non-conference) cargoes. For example, 500 000 tonnes of dry bulk cargo from regional Western Australia and 200 000 tonnes of sugar from regional Queensland are classified as liner cargoes. However, such cargoes usually are not carried by regular liner services but by company-chartered ships or irregular charter services. Moreover, as Liner Shipping Services points out, these are not the type of service offered by conferences:

> Liner shipping involves a multitude of shippers and multitude of cargoes and therefore, if one shipper such as Pasminco, charters a ship, it is not a liner service. In fact

5 Regional ports are defined as all Australian ports except Sydney, Melbourne, Brisbane, Adelaide and Fremantle.

> Pasminco only last year, switched their liner services from Risdon and Port Pirie for their shipments of metals and minerals to charter shipping for all markets. (sub. DR37, p. 2)

Liner services do carry regional exports via centralisation, for example Tasmania and South Australian cargoes are centralised via Melbourne. Similarly, in some trades, Brisbane cargo is centralised via Sydney. This is done because lines wish to utilise their tonnage as efficiently as possible and offer shippers as frequent services as possible. The number of containers exchanged in some trades would not warrant diversion of a vessel to Hobart, Adelaide or Brisbane. (See discussion of landbridging in section 2.2, chapter 2 and section C.6, appendix C.)

Reliability

Participants have submitted that liner services to Australia generally are reliable. For example, APSA stated that service and reliability are of paramount importance and in its view liner cargo shipping services to Australia are sufficiently reliable. It went on to say:

> Fixed day arrivals and departures are virtually the norm. The reform of waterfront practices firstly in 1992 and more recently in 1998 have contributed to these more reliable schedules. In addition the older first generation of cellular container vessels have been phased out in many instances and are [being], or have been replaced by faster vessels which have reserves of speed to make up for delays. (sub. 11, p. 12)

BHP also stated:

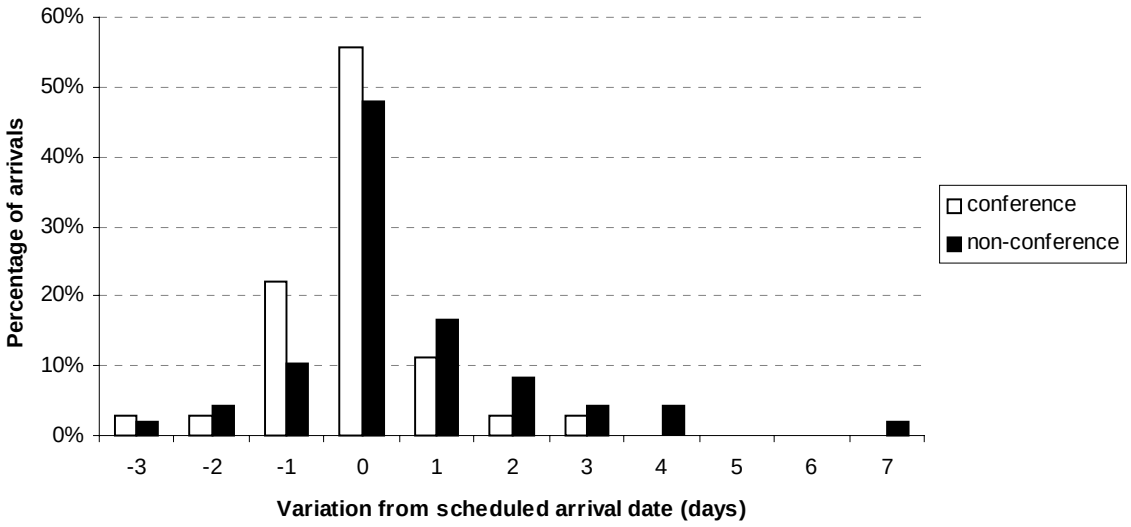
> Technology has led to the development of larger and faster vessels, resulting in improved transit times and schedule integrity. These improvements have enabled shipping lines to take their services to a new level, offering weekly sailings and fixed day services for certain trade routes. Such features have been used in marketing to clearly differentiate services from rival offerings. (sub. 24, p. 3)

The Commission examined one aspect of the reliability of liner services, punctuality, by estimating the number of days variation from the scheduled arrival date for conference and non-conference vessels arriving in Australia in July and August 1999. A sample of 36 conference and 48 non-conference voyages was considered. Arrivals at the first Australian port of call only were considered, as departures and arrivals at subsequent Australian ports would be affected by delays in Australian ports which may not be within the control of shipping operators. Punctuality was measured by comparing the actual date of arrival with the scheduled arrival date announced in *Lloyd's List Daily Commercial News* liner shipping schedules. Scheduled arrival dates were obtained 21–28 days prior to arrival for vessels on the North America–Australia and Europe–Australia trades and 14–21 days prior to arrival for vessels on the South-East Asia–Australia and

North-East Asia–Australia trades, taking account of the longer transit times for vessels on the former two trades.

The results of this study are summarised in figure 5.1, and suggest that conference vessels are more punctual than non-conference vessels. For both conference and non-conference vessels, the majority of vessels arrived in Australia on the scheduled arrival date, with the remainder arriving between 3 days early and 7 days late. Conference vessels are more likely to arrive on the scheduled date than non-conference vessels. Of the vessels that do not arrive on the scheduled arrival date, conference vessels are most likely to arrive one day early, and non-conference vessels one day late.

Figure 5.1 **Punctuality of conference and non-conference liner services, July–August 1999**[a]



a Punctuality is measured by the number of days between the scheduled date of arrival and the actual arrival date. Negative variation indicates the vessel arrived ahead of schedule.

Data source: Lloyd's List Daily Commercial News, various.

These results support the views submitted by participants. For example, the Sea Freight Council of Western Australia submitted:

> In general the experience of SFCWA is that conference carriers have been slightly more reliable than non-conference carriers in terms of frequency and certainty of service. This is not to say that non-conference carriers have not improved their performance, but it does appear that conference carriers generally retain an edge over non-conference carriers in terms of reliability and efficiency of service over the long term. (sub. DR32, p. 3)

Liner Shipping Services also suggested:

> As a general view, reliability of Conference services has been increasing, with … berthing windows becoming the norm and definite strides have been made in the direction of fixed day arrivals and departures in terms of both published sailing schedules and actual delivery. (sub. DR28, p. 4)

5.2 Case studies

This section presents brief case studies relating to four Australian trades, to aid in assessing the extent of competition on those trades (detailed case studies are presented in appendix G). The trades selected are Australia–South-East Asia, Australia–North and East Asia, Australia–Europe and Australia–North America. These are the major Australian liner trade routes, excluding Australia–New Zealand. However, since the breakdown of the trans-Tasman Accord, the Australia–New Zealand trade effectively has been absorbed by the Australia–North America and Australia–Europe trades.

Australia–South-East Asia

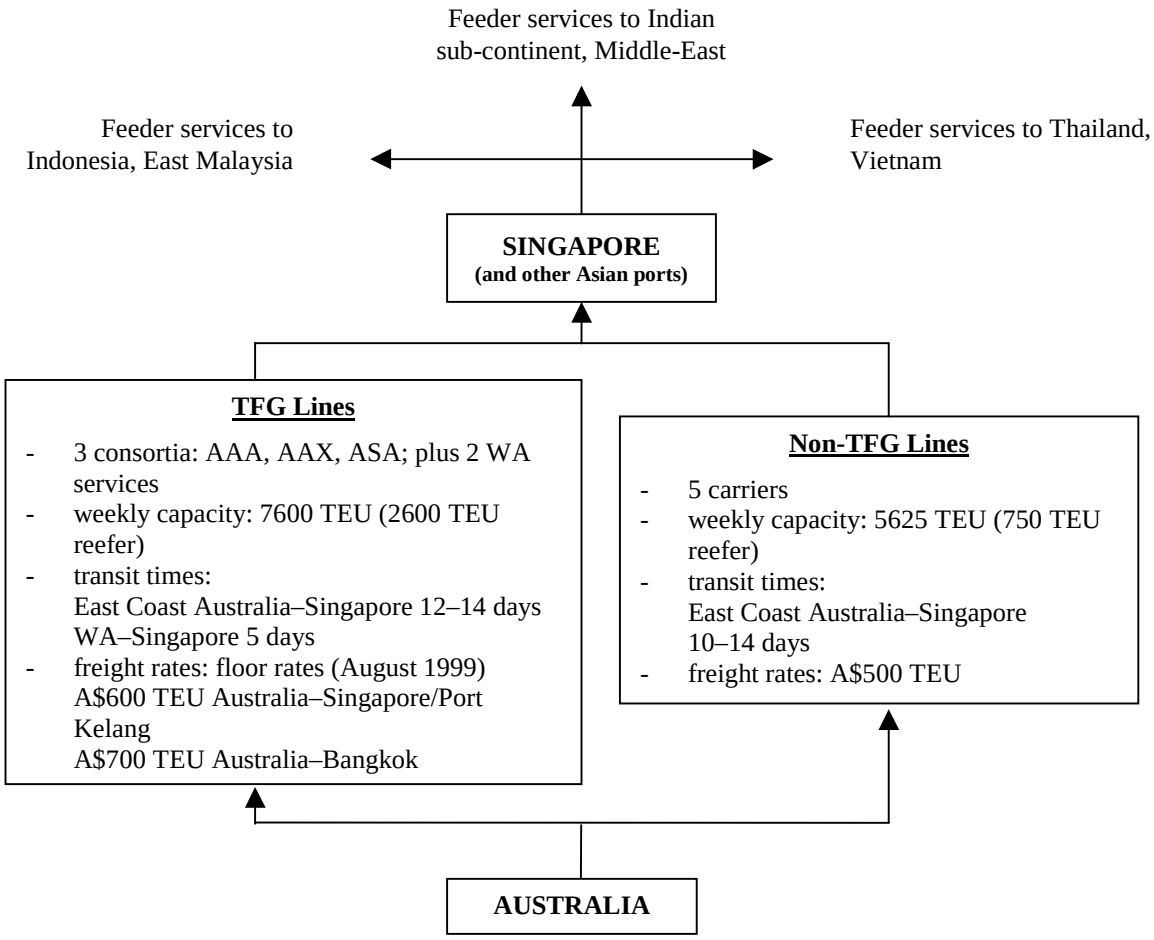
The Australia–South-East Asia trade links Australia with Indonesia, Malaysia, Singapore, Thailand and Vietnam. Singapore is the major hub for Australian transhipment cargoes routed to and from Europe and North America. Cargo shipped on vessels employed in the Australia–South-East Asia trade thus includes exports to and imports from South-East Asia (trade cargo) as well as cargo originating in or destined for Europe and North America (transhipment cargo).

Major developments in the trade since 1993 include:

- the breakdown of the Australia–South-East Asia Outward Shipping Conference in the northbound trade and its replacement by a Trade Facilitation Agreement;
- relatively frequent changes in consortia membership, culminating in the emergence of three major groupings of lines in 1998;
- relatively frequent entries into and exits from the trade;
- the growing importance of Singapore as a transhipment hub for Australian trades, and the consequent growth in the volume of transhipment cargo handled by vessels employed in the trade; and
- a stepping-up in the intensity of competition, associated not only with the expansion of incumbent lines, but also with the entry of new lines and a reduction in the volume of northbound cargo following the Asian financial crisis.

A summary of the various liner shipping service options available to Australian exporters on the Australia–South-East Asia northbound trade is presented in figure 5.2.

Figure 5.2 **Summary of northbound liner services to South-East Asia, 1999**



Data sources: Lloyd's List Daily Commercial News (various issues); Crichton (1999).

Excess capacity has been a feature of the trade. Assuming vessels operate at load factors of 75 per cent, northbound capacity is approximately 470 000 TEU. Estimated northbound cargo volume for 1998, excluding transhipment cargo, was approximately 200 000 TEU. Accepting the *Containerisation International* estimate that 70 per cent of cargo volume is 'trade cargo' and the remaining 30 per cent transhipment cargo, increases the northbound cargo volume to 286 000 TEU. Vessels employed in the trade in mid-1999 had the capacity to carry approximately 65 per cent more than the cargo volume on offer. In August and September 1999 attempts are being made to rationalise the trade — the ASA consortium has transferred vessels employed on one of its two loops to the Australia-North and East Asia trade, the AAX consortium has cut the number of vessels employed from five

to four, while Maersk and K-Line plan to operate a joint service from Western Australia to Singapore.

Freight rates in the Australia–South-East Asia trade have fallen substantially since the mid-1990s. By October 1998 rates were said to be as low as A$500–550 per TEU. Falls in rates are the direct consequence of increased capacity in the trade.

Members of the Trade Facilitation Group (TFG) announced a rate increase in May 1999, with the aim of establishing a 'rate floor' of A$600 per TEU and A$1000 per forty foot unit, compared with prevailing rates of A$500–550 per TEU.

Each of the three consortia operating within the TFG offers at least a weekly service to and from South East Asia. Non-TFG lines offer a lower service frequency. Wilhelmsen, Contship and PIL/MISC (Queensland service) offer two sailings a month, while CGM/Marfret provide three sailings a month.

Vessels operated by TFG and non-TFG lines serve a range of ports in Australia and South-East Asia. Most vessels call at Fremantle and then sail across the Great Australian Bight to east coast ports, often choosing to centralise Brisbane cargoes to Sydney rather than incur the cost of a direct call.

All lines call at Singapore, the pre-eminent hub port in South-East Asia. Port Kelang also receives relatively frequent direct calls. Trade flows between Australia and many South-East Asian ports are not large enough to warrant frequent direct services. Transhipment via Singapore offers an efficient alternative.

Because of the nature of the trade (it is comparatively short and a direct as well as a 'feeder' route) the distinction between conference (TFG) and independent operators, in terms of service, is less pronounced than on other Australian trades. Nonetheless, TFG members offer higher reefer capacities, more comprehensive port coverage and more frequent services than non-TFG operators.

Australia–North and East Asia Trade

Vessels employed on the Australia–North and East Asia trade normally serve one of two loops, either Australia–East Asia (China, Hong Kong, the Philippines and Taiwan), or Australia–North Asia (Japan, South Korea, North Korea and Russia). Whilst the trade is relatively small by northern hemisphere standards — a recent estimate suggested that the 1999 northbound volume will total approximately 280 000 TEU — it is relatively well balanced.

Major developments in the Australia–North and East Asia trade include:

- relatively frequent entry and exit by non-conference lines;
- intensifying competition from lines offering transhipment services via Singapore;
- the adoption of a more aggressive stance by independent lines such as MSC, leading to competitive responses by conference and non-conference lines alike;
- intensification of competition over time, especially since 1998 when the Asian financial crisis affected demand and the entry or threat of entry by non-conference carriers, including transhipment operators, led to substantial overtonnaging and a decline in freight rates; and
- the formation of a Discussion Agreement (Australia–North and East Asia Trade Facilitation Agreement), involving both conference and non-conference lines, in an attempt to stabilise a trade characterised by a growing gap between supply and demand.

Competition in the Australia–North and East Asia trade has intensified during the past two years as a result of new entry and the competitive response to new entry on the part of incumbent lines.

New entry and the expansion of incumbent lines on the supply side, together with the impact of the Asian financial crisis on the demand side, has led to an increase in the level of surplus capacity in the Australia–North and East Asia trade. If it is assumed that vessels employed in the northbound trade operate at 75 per cent capacity utilisation, total northbound capacity is approximately 570 000 TEU. This figure does not include the capacity provided by transhipment operators, such as Hanjin and MISC, offering services to North and East Asia via Singapore.

The trade appears to be substantially overtonnaged — 1998 northbound capacity (570 000 TEU, assuming 75 per cent vessel utilisation) is roughly twice as large as northbound cargo volume (260 000 TEU in 1998).

Freight rates in the Australia–North and East Asia trade have declined significantly during the late 1990s. Tim Smith, P&O Nedlloyd General Manager for Australia–North and East Asia services, has noted that:

> Average rates increased in 1994 and 1995, but then fell back again in 1996 and 1997. The rate of reduction accelerated in 1998, and has continued in 1999 … average freight rates in the trade [as of July 1999] are only 78 per cent of their 1996 level. (Smith 1999)

In early 1999, northbound rates from Australia–East Asia were reported to be approximately A$700–800 per TEU, with transhipment operators reported to be quoting rates as low as $550 per TEU between Australia–North and East Asia (via

Singapore). If the transhipment rate was as reported, exporters were able to ship cargo to North and East Asia via Singapore for little if any more than the rate to Singapore.

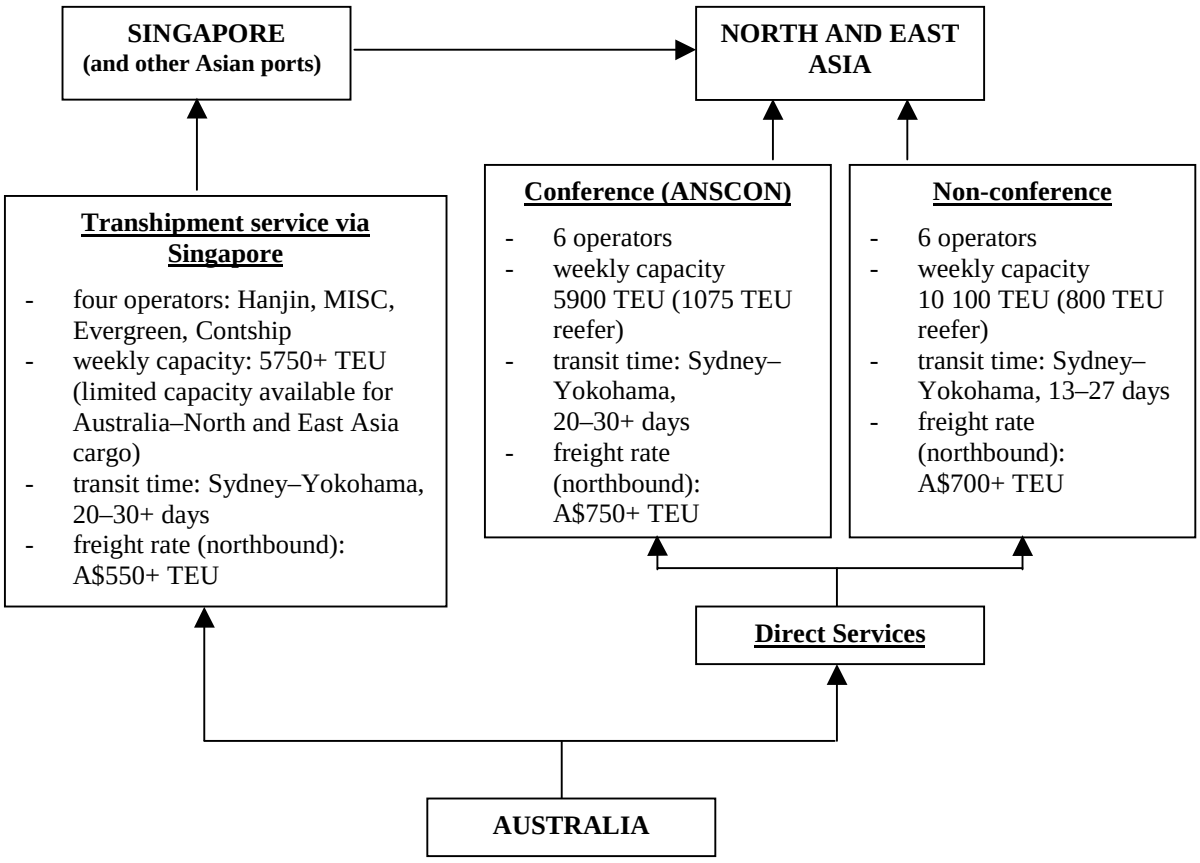
Within Australia, vessels normally call at Melbourne, Sydney and Brisbane. Adelaide may be served directly or via centralisation to Melbourne, while Bell Bay, Burnie and Devonport cargoes are centralised to Melbourne. In Japan, Nagoya, Osaka and Yokohama commonly receive direct calls.

Shipping lines in the Australia–North and East Asia trade have restructured their services, rationalising port calls so as to provide faster transits. The ability to provide the fastest transit between ports is important in marketing a liner shipping service. Shipping lines tend to specialise in sub-markets — whilst ANSCON provides the fastest service from Sydney to Yokohama, Maersk offers the fastest service from Melbourne to Yokohama.

In general, the conference lines as a whole provide better quality service than individual non-conference lines in terms of overall frequency of service, port coverage and reefer and dry cargo capacity.

A summary of the various liner shipping service options available to Australian exporters on the Australia–North and East Asia northbound trade is presented in figure 5.3.

Figure 5.3 **Summary of northbound liner services to North and East Asia, 1999**



Data sources: Lloyd's List Daily Commercial News, various issues; Crichton (1999).

Australia–Europe

The Australia–Europe trade includes Mediterranean countries as well as countries in North Europe. It is one of Australia's longest liner trade routes, and in total is the smallest of Australia's major liner trades. There is a significant trade imbalance on the route — in 1998, southbound volumes from Europe were reported to be around 240 000 TEU, while northbound trade was 85 000 TEU (LLDCN, 28 May 1999, pp. 1, 8).

Although a number of lines have entered and departed from the Australia–Europe trade since 1993, the number of lines servicing the trade has been relatively stable in recent years. While the number of direct non-conference operators has declined, the number of transhipment operators has increased. The trade is currently serviced by the Australia to Europe Liner Association (AELA) and a number of non-conference lines. MSC is the only non-conference line currently competing with the AELA on

direct services from Australia to Europe. However a number of lines offer transhipment services, including Maersk, APL, OOCL and Evergreen/Lloyd Triestino.

MSC and the transhipment operators on the Australia–Europe trade are providing substantial competition to the conference. MSC reportedly has a large share of the direct market, and the volume of cargo transhipped has increased significantly in the last few years, particularly southbound.[6]

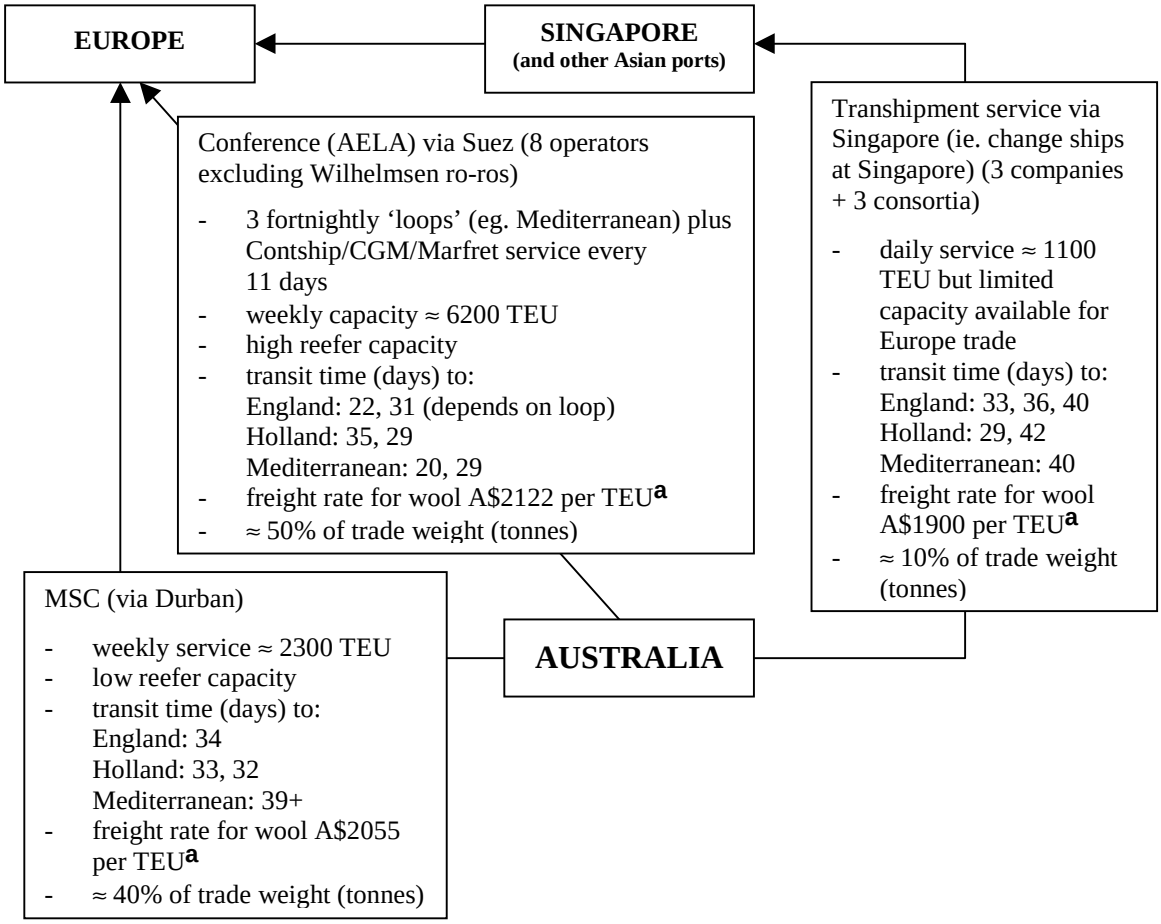
The annual capacity of direct conference services on the Australia–Europe trade has increased significantly since 1993, while the annual capacity of direct non-conference services has declined (see table G.15, appendix G). This largely is due to the fact that the number of conference members has increased, while the number of non-conference lines offering direct services has decreased (although the capacity of MSC has increased significantly since 1993). The annual capacity of direct conference services in 1999 is more than twice that of direct non-conference services. Furthermore, the conference offers greater reefer capacity than MSC. Significant transhipment capacity to Europe also is available, although inevitably not all capacity on transhipment vessels is available for Australia–Europe cargo. Significant excess capacity therefore exists in the Australia–Europe trade relative to trade volumes. This is particularly the case northbound.

The conference as a whole offers more frequent services to Europe than its competitor for direct services, MSC. MSC offers a weekly fixed day direct service from Australia to Europe (with transhipment to the Mediterranean). The AELA offers three fortnightly fixed day direct services to Europe and the Mediterranean, as well as a Contship/CGM/Marfret direct service every 11 days. AELA member Wilhelmsen Lines also offers a round-the-world ro-ro service with destinations in Europe and the Mediterranean every 15 days. The AELA offers a significantly wider range of foreign direct ports of call than MSC. Furthermore, where both the conference and MSC offer direct services, the conference offers shorter transit times in most cases. The level of service provided by transhipment operators to Europe is variable, with some operators offering transit times comparable to the AELA, while others offer considerably longer transit times. Ports of call and frequency also vary across transhipment operators.

6 Estimates of volumes of cargo transhipped on the Australia–Europe trade are available from several sources. While these estimates vary, they all show that transhipment, particularly via South-East Asia, has increased significantly on this trade in recent years, and could now account for up to 30 per cent of the southbound trade.

A summary of the various liner shipping service options currently available to Australian exporters on the Australia–Europe northbound trade is presented in figure 5.4.

Figure 5.4 **Summary of northbound liner services to Europe, 1999**



[a] Freight rates for wool are for 1998-99 season. Freight rates for wool are among the highest on the Australian–Europe trade.

Data sources: Liner Shipping Services (sub. 10, att. C); LLDCN, 24 May 1999, 28 May 1999; Bureau of Transport Economics, International Cargo Statistics Database; DTRS Liner Service Sheets.

Freight rates on the Australia–Europe trade have fallen steadily and significantly over the last decade, although not to the same extent as on Asian trades. From 1989 to 1998, nominal freight rate indices for this trade declined by around 30 per cent (LSS, sub. 10, p. 12). Freight rates in the Australia–Europe trade cited periodically in industry and other publications also suggest that freight rates on the trade have declined significantly in recent years.

Australia–North America

In 1997-98 liner shipping carried 1.3 million tonnes of Australia's exports valued at over $3.5 billion to North America (United States and Canada) representing about 7 per cent of Australia's total liner exports by weight and 11 per cent by value. Imports from North America carried by liner shipping totalled 2.2 million tonnes with a value of over $10 billion. Like the European trade, the Australia–United States trade is a long route with relatively small volumes. It has a high reefer requirement with seasonal variations in demand on the outward trade. The density of some exports limits the use of the more economical forty foot containers.

In 1997-98 the North American shipping conferences carried 45 per cent of exports to North America using liner shipping, representing over 60 per cent of the value of liner exports to North America. This is a similar share to that carried by conferences in all Australian trades. However, over the last ten years the conference share of North American outward trade has remained fairly stable, unlike the falling share observed on most other outward trades.

Around 40 per cent of dry container capacity on the direct outward trade is independently owned and transhipment provides further independent capacity. Around 10 per cent of containers to and from Australia and New Zealand to the US west coast are transhipped.

Only about 10 per cent of direct refrigerated container capacity (reefers) is in independent hands. There is also some regular transhipment reefer capacity available, but this is less competitive with direct services due to shipper concerns regarding possible risks to product during the transhipment phase. The conference share of meat exports — the main refrigerated cargo to North America — was close to 80 per cent in 1997-98.[7]

Membership of the Australia–North America shipping conferences has been stable, but shares of capacity between the three members have altered significantly over the last five years. Although it is an open conference, there has been no new entry in the last decade,[8] suggesting an absence of significant long-run excess profits.

There also is a discussion agreement comprising conference members and the joint venture between Cool Carriers and Scaldis, which operates a seasonal and irregular joint service from North Queensland using ships with palletised reefer capacity.

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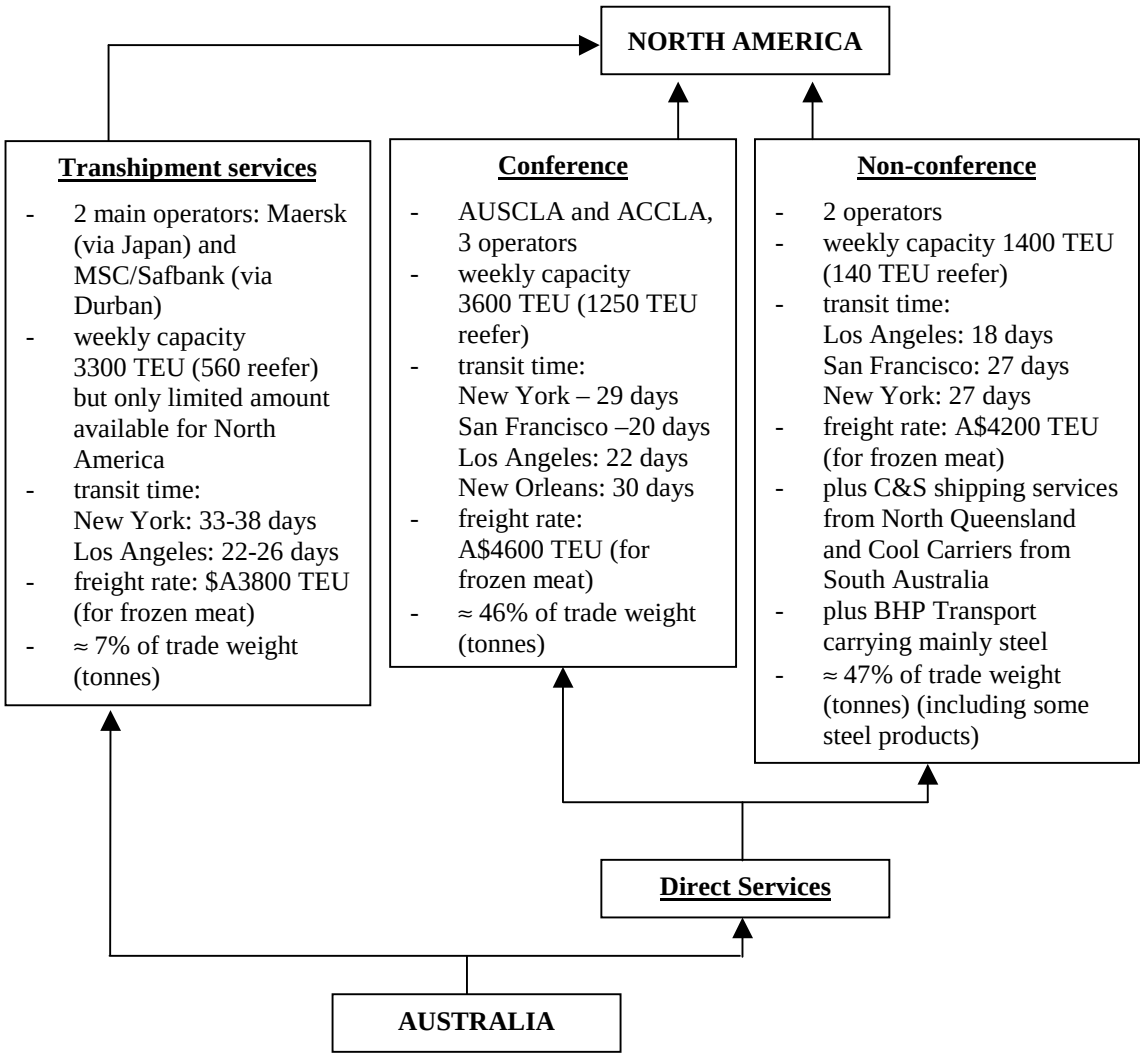
7 Over 40 per cent of the weight of cargo carried to North America by conferences is meat products. One third of monthly conference capacity (in TEUs) is refrigerated containers.

8 P&O Nedlloyd took over Blue Star line in 1998 and assumed its place in the conference.

Figure 5.5 outlines the main outward shipping services available on the North American route.

Figure 5.5 **Summary of northbound liner services to North America, 1999**



Data sources: Liner Shipping Services (sub. 10, att. C); LLDCN, 24 May 1999 and 16 July 1999; Bureau of Transport Economics, International Cargo Statistics Database; DTRS Liner Service Sheets.

On the inward trade from North America, conference and non-conference liner services carried almost equal weight of cargo in 1997-98, the conference share having fallen from 60 per cent in 1989-90. The volume of liner shipping trade southbound is considerably greater than northbound. This imbalance, and the small requirement for reefer containers, creates openings for additional carriers on the southbound leg and there are a large number of transhipment operators.

As with other trades, there have been significant falls in freight rates on the North American route over the past decade. Discussions with participants indicate

particularly large falls in freight rates for dairy products, from what were considered to be high rates. Refrigerated rates for meat products have also fallen with rates for bulk pack meat in cartons in 1998 being 25 per cent below 1993 rates, although about 15 to 20 per cent above those achieved during a period of fierce competition in 1994. Independents and transhipment operators generally offer somewhat lower freight rates for meat products than the conference. However, meat exporters have placed a high premium on quality and frequency of service and have tended to remain with the conference. Freight rates for mixed cargoes have declined by around 30 per cent since 1993 and those for wool have halved.

The trade from Australia to North America has a high requirement for refrigerated containers and there is a significant imbalance in the need for these containers between the northbound and southbound legs, with many returning empty. This imbalance will tend to add to the freight rates charged for export products requiring the more expensive reefer containers because costs can only be defrayed on one leg. In addition, stevedoring charges are very high in the US.

Conference rates for outward refrigerated cargoes often included inland transport and these usually incorporated some degree of cross subsidy between destinations. Recent indications are that these cross subsidies are now being removed.

The North American conference lines service Brisbane, Sydney, Melbourne and Adelaide. They call at a wide range of east and west coast ports in the United States. Non-conference operators cover the same Australian ports as the conference, while MSC/Safbank provide a transhipment service also stopping at Fremantle. Transit times of major direct service independents appear to be similar to those of the conference.

Discussions with shippers of refrigerated products indicated that the northbound North American conferences provided good service but had been relatively inflexible in discussing terms and conditions. The previous US regulatory requirement that agreements with shippers had to be publicly filed may have inhibited the negotiation process. Early indications are that the removal of these requirements may have stimulated more flexible negotiations on shipping arrangements.

The outward trade to North America has fewer carriers, both conference and non-conference, than on most other trades (see figure 5.5). For outward dry cargoes, the high non-conference share of the trade is indicative of a competitive environment. The presence of greater transhipment opportunities on the southbound trade, together with a very limited reefer requirement, also suggests strong competition on the inward trade.

Conference share of the more specialised outward reefer trade is much higher. This would appear to reflect shippers' preferences for the reliability and service level provided by the North American conference. Nonetheless, independents operating direct services have over 10 per cent of northbound reefer capacity and independent transhipment services also exist. Independents have made incursions into the conference share of reefer cargoes, the most notable in the price war of 1994, but shippers have tended to return to using the conference.

6 Evaluation of Part X

In this chapter, the performance of Part X is evaluated against the criteria outlined in chapter 3.

6.1 Performance of Part X

The primary objective of Part X is to assist shippers (especially exporters) to obtain competitively-priced shipping services of adequate frequency and reliability. Comments from shippers suggest that market outcomes over the 1990s have been favourable to them and the evidence in chapter 5 confirms these views. The contribution of Part X in attaining these outcomes is examined below.

Reasons for observed outcomes

The principal reason for lower freight rates and improved service levels for Australian shippers appears to be market forces in both global and Australian liner shipping markets, particularly supply-side forces. Growth of and improvements in transhipment services coupled with increased capacity of direct service operators are major factors contributing to rate declines. The high level of container ship orders, especially the building of larger vessels in a bid to capture economies of scale, combined with low scrapping rates and cascading of ships formerly employed on mainline northern hemisphere routes to north–south trades, and continued subsidisation of shipbuilding and shipping by some governments, has generated a level of vessel capacity which has tended to outstrip the rate of growth of freight carried. There also have been reductions in stevedoring costs (due to improved reliability on the Australian waterfront) and bunker costs (though bunker costs are likely to increase in line with recent oil price increases) which have contributed to rate declines more recently. On the demand side, economic recession in several Asian economies has put short-term pressure on regional freight rates, particularly in the Australia–South-East Asia route.

The role of the market in providing favourable outcomes for Australian shippers is not new. In 1986, the Industry Task Force observed:

> Not for half a century have such competitive pressures existed in world liner shipping. Australian users generally are benefiting from this market situation through both favourable freight rates and a wider choice of carriers. (DoT 1986, p. 1)

This feature of liner shipping appears to have continued for over a decade. For example, the OECD noted that:

> … between 1985 and 1995 the worldwide index of standardised container freight rates declined from 100 to 51.5. The main contributing factor to this was almost permanent over capacity on certain main trades. (1997, p. 125)

Role of Part X

As outlined in chapter 4, Part X provides a comparatively permissive framework in which carriers (on outward and inward trades) can achieve the economies offered by shipping conferences and other cooperative arrangements, including consortia. Importantly, however, shippers are not restricted to using conference services. And while Part X allows conferences to form and engage in a range of activities that normally would be proscribed by competition law, it does not compel formation of conferences (nor impose certain structures — for example, it does not insist on 'open' conferences). And, most importantly, it does not protect conferences from competition from external sources or, indeed, from competitive forces within the conference. In this sense, Part X does not thwart market forces which have been critical in achieving satisfactory outcomes for individual Australian shippers.

The Law Council of Australia argued that market forces operate in the liner shipping market *despite* Part X (trans., p. 73), the implication being that, by allowing conferences to operate, Part X restricts such forces. However, Part X does not oblige independents to join conferences nor does it impose barriers to entry to Australian trades. Moreover, while conferences necessarily involve cooperation between some shipping lines, such cooperation and the coordinated, regular service they provide, can be regarded as a market solution to low-cost provision of shipping services for shippers of general cargo. In other words, cooperation in some form, whether via conferences, consortia, joint ventures or company mergers, will be required if shipping lines are to be in a position to provide comprehensive, regular and frequent shipping services.

Thus, by allowing conferences and other cooperative arrangements to operate, albeit subject to market competition and obligations imposed by Part X, Part X allows shippers to access a full range of shipping services. The role of conferences in providing the level of service required by the wool industry was stressed by Interlaine:

> In respect of wool, the following considerations need to be borne in mind:

- on average some 14–15 000 TEUs (or close to 300 000 tonnes) are carried from Australia to the European area each season.
- this wool needs to be shipped from all of Australia's major ports to a wide range of ports in Europe and the Eastern Mediterranean.
- many mills are located at some considerable distance from the nearest ports of arrival. It is therefore essential that efficient on-carriage arrangements exist to enable the wool to reach its final destinations without delay, and at a competitive price.
- in today's difficult trading environment, European receivers and manufacturers cannot afford to hold large stocks of raw material, they work very much on a "quick response" or "just in time" basis. Hence their need for high-quality service and reliability, rapid transit times, linked to competitive ocean freight rates, and space availability.

The existence of the Australia to Europe Liner Association (AELA) in the form permitted by Part X of the TPA provides such a service. (sub. 2, pp. 1–2)

Interlaine also noted that potential market power of conferences was effectively constrained by competition from independent operators:

> Even if certain of these [independent] operators are not major wool carriers to Europe today, they certainly would quickly enter the wool industry in a big way if Conference lines attempted to significantly increase their rates; this is in itself a guarantee that the Conference will not enjoy any quasi-monopolistic position. (sub. 2, p. 2)

As discussed in chapter 4, Part X also gives Australian exporters rights to negotiate collectively with conferences to determine minimum service requirements and requires conferences to supply information relevant to such negotiations. Collective negotiation allows Australian shippers to exploit any countervailing power that they might possess, while access to relevant information improves the negotiating position of shippers.

Shippers who have participated in this inquiry consistently expressed the view that this bargaining framework has contributed to satisfactory outcomes for Australian exporters. For example, according to APSA, the designated peak shippers' negotiating body under Part X:

> APSA submits that without the rights of exporters and the obligations placed on carriers under sections 10.29, 10.41 and 10.52, exporters would not have achieved the successes they have achieved, and that carriers would have been able to service their own interests without regard for exporters. (sub. 11, p. 14)

While it could be argued that APSA may have an interest in justifying its status as the peak shippers' body, individual shippers also expressed the view that scope for collective action under Part X is desirable. The Commission considers that shippers' views are critical in this inquiry. Given the benefits which accrue to shippers from

lower freight rates and improved service levels, it is unlikely that they will enter arrangements which do not promote such an outcome. Again quoting Interlaine:

> … we believe that in any negotiation on terms and conditions, wool shippers and receivers will be at a relative advantage if they are in a position to negotiate together for the volumes of cargo described above, and as a result, to insist that the level, frequency and quality of service provided should satisfy the requirements of the industry as a whole.
>
> This is important for the Australian economy itself. Whilst there are in the industry a small number of major exporters and receivers, there are also a much greater number of smaller operators. They together make up overall demand. The availability of a quality service for *all* shippers and receivers to the destinations they require works to the advantage of wool growers in Australia, whose current plight, mainly as a result of the Asian crisis, is well-documented.
>
> In our view, the above comments on service apply equally well to price. In this area too we believe that WCG [Wool Commodity Group] has been successful in achieving overall reductions in freight rates on behalf of the industry as a whole. (sub. 2, p. 2)

Shippers claim that collective negotiation under Part X has allowed them successfully to negotiate terminal handling charges, bunker adjustment factors and currency adjustment factors, and minimum service levels. Nonetheless, the role of APSA in negotiating freight rate changes with conferences increasingly has been taken over by designated secondary bodies and, within parameters so set, by direct negotiation between large individual exporters and shipping operators. Smaller exporters, however, appear to continue to rely on group negotiations under the umbrella of designated shipper bodies.

Though APSA concedes that the demand by shippers for collective rate negotiations has weakened, it submitted that Part X:

> … allows shippers to demand that Conferences meet and negotiate on other matters such as:
>
> • Surcharges
>
> • Minimum levels of service
>
> • Bill of lading clauses
>
> • Destination zone/inland haulage charges (sub. 11, pp. 10–11)

Similarly, although BHP noted that the operation of market forces has been instrumental in achieving current price and service outcomes, it also claimed that Part X has promoted shippers' interests:

> There are numerous recent examples of instances where shippers, acting collectively in accordance with Part X, have been successful in avoiding attempts by shipping lines to impose ancillary charges, covering items such as Port Service Charges (PSCs),

> Terminal Handling Charges (THCs) and Currency and Bunker Adjustment Factors (CABAFs). (sub. 24, p. 4)

APSA and the other designated bodies also may play a role in disseminating information provided under Part X by conferences to individual shippers, thus indirectly enhancing the latter's negotiating power. It also is argued that the countervailing provisions of Part X would become more relevant when, and if, market conditions tighten. However, it is not clear to the Commission how collective action by Australian shippers could be more successful in such conditions than it is currently.

The ACCC (sub. DR36) suggests that Part X may have contributed to *in*efficient outcomes for Australian shippers because:

> … preferences for a particular price/quality/timeliness trade-off is likely to vary between shippers. The interests of some shippers are likely at certain times to be in conflict with others with regard to their requirements for shipping services. Exporters requiring frequent services might be well served by arrangements providing regular service but at the cost of a premium on freight rates. However, for shippers or potential shippers that don't require regular services but do want low freight rates the arrangements would be less satisfactory and might restrict potential shippers/exporters being able to take up a market opportunity. That is there is a diversity of shippers needs with regard to their specific requirement for an efficient liner shipping services. (sub. 36, p. 4)

Certainly shippers have diverse requirements. However, the Commission disagrees with the ACCC's assessment that Part X may have prevented such diverse demands from being met. Evidence presented in chapter 5 shows that shippers have a wide range of choice on all Australian trades, including direct conference services, direct non-conference services and transhipment services. These offer different service characteristics such as frequencies and port coverage at a range of prices. The above quote seems to assume that the conference is the sole provider of shipping services, and/or that it is mandatory for existing or potential shippers to use their service. This is not the case (see chapter 5). Given the degree of competition in the market, the Commission has little reason to doubt that carriers (conference or non-conference) quickly would provide a service if there were sufficient demand to justify it.[1]

---

1 Of course not *all* demands are likely to be met. As in any market where prices are positive, some potential shippers will be excluded from the market. That said, however, anecdotal evidence suggests that very low-valued commodities are being exported from Australia at present (hay, for example). Moreover, the Commission has received no evidence that excessive freight rates and levels of service — due to conferences or the operation of Part X — have prevented trade.

It also should be noted that the coordinated service provided by a conference provides a low cost means of meeting the requirements of shippers who use services infrequently. A shipper who, for example, requires a liner service twice a year will still want a timely service and also may require a quick and reliable service. The 'bus service' provided by the conference is likely to be provided at a far lower cost than a service customised to meet a shipper's sporadic demand. Indeed, if all shippers had regular, certain demands the need for traditional liner services and conferences would diminish — liner shipping essentially could become a charter operation.

Stable access for all Australian exporters and pan-Australian rates

A secondary objective of Part X is to provide stable access to adequate shipping services to *all* Australian exporters, regardless of location.

Shippers and state governments have argued that Part X has been important in achieving the current regional spread of international liner shipping services. In observing strong growth in the number of ships using the Port of Adelaide over the last decade, the South Australian Government argued:

> These trends indicate that the Part X arrangements have provided a critically important mechanism to ensure that there are frequent, reliable and stable shipping services available for SA shippers in sometimes thin regional trades which otherwise might not constitute commercially viable levels of cargo volumes.
>
> These shipping services have also generally been provided to South Australian shippers at market conservative freight rates … (sub. 12, p. 2)

The Western Australian Shippers' Council suggested:

> By rescinding Part X exclusions there is considerable risk, particularly for Western Australia that service levels will be greatly reduced. Conference lines currently are obliged under agreement to service Fremantle. This may not be considered commercially viable by lines operating independently. (sub. 20, p. 1)

The Department of the Treasury counters such claims with data which suggest that smaller regional ports (for example, Newcastle, Bell Bay, Bowen, Townsville, Hobart, Darwin) are serviced predominantly by non-conference lines (sub. DR35, pp. 9–11). However, as noted in chapter 5, the dominant share of these non-conference exports from regional ports appears to be carried in chartered breakbulk vessels (for example, meat and fruit by Cool Carriers) or company-chartered breakbulk vessels (for example, ores and minerals by Pasminco). These services are not regular, scheduled, advertised liner services which carry multi-product cargoes.

It also is suggested that pan-Australian rates may have promoted access to liner shipping services for shippers in all States. For example, the South Australian Government has argued:

> Pan Australian freight rates offered by Conference shipping lines also ensure regional Australia, including Adelaide exporters, are not disadvantaged through lack of sufficient volumes to attract high discounts generally available only at high volume ports. (sub. 12, p. 3)

While they are still applied in some trades, the use of pan-Australian rates is significantly less common than in the past. Liner Shipping Services suggested:

> … the increasing tendency for Lines to independently set rates has meant that there has been a significant diminution in the application of pan-Australian rates … (sub. 10, p. 15)

Similarly, Meyrick & Associates submitted:

> Although it can still be found in some trades — it is common, for instance, in the carriage of meat in the US trades — the use of pan-Australian rates has declined substantially over recent years. (sub. 5, p. 54)

The economies and greater certainty for carriers provided by conferences, in conjunction with the conditions and negotiating framework of Part X, may provide some encouragement for negotiation of a wider geographic provision of shipping services and pan-Australian rates. In common with the general thrust of Part X, however, there are no regulatory *requirements* stipulating port coverage or pan-Australian rates — this is a matter for negotiation between shippers and conferences within the Part X framework. Given the extent of competition in Australian trades, it appears unlikely that conferences are in a position to offer regional services at the expense of shippers using larger ports. In other words, there is very little scope for inefficient cross-subsidisation of regional ports by conferences. To the extent such services are provided they appear to be market-driven.

Australian flag carriers

One of the principal objectives of Part X is to 'ensure that efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade'. Thus Part X contains what is essentially a 'fair trading' clause.

ANL Container Line (ANLCL) argued that:

> … it is vital that an Australian Flag operator is protected by legislation from over-zealous competitors that only serve to enter the market and destroy the competition through hostile pricing strategies. (sub. 8, p. 2)

And complained that:

> ANLCL has certainly been hindered by the actions of several competitors. Freight rates have plummeted dramatically in the last 2–3 years. The free fall of rates is unreasonable and has hampered ANLCL from effectively operating in the market place. The saturation of the market with revised and upgraded services has contributed to ANLCL's unprofitability in recent years. (sub. 8, p. 2)

However, the Commission considers that the fall in freight rates has been caused by market forces in global and Australian liner shipping markets rather than conference action to preserve market dominance. The role of Part X with respect to Australian flag shipping is discussed further in chapter 8.

6.2 Other criteria

Additional criteria to be considered in evaluating Part X were identified in chapter 3. This section assesses Part X against these criteria.

Impact of Part X on competition

The terms of reference for the inquiry ask the Commission to examine the extent to which Part X has restricted competition. As noted in chapter 3, as a general rule, competition is desirable because it generates lower prices and better services for consumers.

By definition, conferences and other cooperative arrangements between liner shipping operators (including discussion agreements and consortia) involve practices that attempt to limit competition between members. These practices may include joint price setting, coordination and rationalisation of services and capacity and pooling arrangements.

The Commission has received consistent evidence from shippers and shipping operators that conference practices have eased — for example, common rates are less extensive and binding loyalty agreements with customers largely have been replaced by individual service contracts. In some cases, conferences have been replaced by non-binding discussion agreements (for example, on the South-East Asian trade) (see LSS, sub. 10, pp. 4–5, 10–11).

Nevertheless, the essence of conferences, discussion agreements and consortia, is cooperation rather than competition between members. Although conferences and other arrangements permitted under Part X inevitably involve practices that limit competition between members, the Commission does not agree with some participants (for example, see subs. 15, 19 and 21) who suggest that, in the medium to long term, there would be more competition and better outcomes for Australian shippers without such arrangements.

For example, ACCI stated:

> The Chamber has a strong philosophic predisposition towards maximising competition within the Australian economy, which would generally have the ACCI call for the termination, or failing that the wind-back, of Part X. (sub. 15, p. 1)

And, according to the Law Council of Australia:

> The approach we propose [repeal of Part X] would do away with existing government sanctioned cartelisation, and promote a competitive market. Indeed, it is difficult to see how the objective of internationally competitive freight rates could be achieved without encouraging open international competition. (sub. 19, p. 7)

This view is correct if conferences act purely as vehicles for generating and exercising monopoly power. However, if conferences provide a mechanism for reducing risk and transaction costs enabling shipping operators to exploit production economies (generally agreed to exist in liner shipping) while providing a coordinated shipping service, proscription of conferences will tend to increase the costs of providing given services (see appendix B). In these circumstances, there can be no *presumption* that elimination of conferences and lower industry concentration will lead to improved outcomes (in the sense of lower prices for given service levels) for Australian shippers.

In the absence of conferences, alternative means of reducing risk and transactions costs may be adopted — corporate mergers, for example. In other words, a conference encompassing several lines might be replaced by a single operator. Alternatively, some operators may leave a trade entirely and/or direct services may be replaced by relay and transhipment services via a regional hub. This latter option might be especially attractive to shipping lines if other countries continued to allow conferences to operate, enabling lines to operate as a conference from the hub to foreign destinations. In neither case, however, is it certain that the outcome for Australian shippers would be beneficial in terms of price or service quality. Moreover, in neither case can it be certain that competition would be greater than with conferences. Indeed, a conference is likely to provide more competition as conference members often compete against each other and offer somewhat differentiated services.

Prohibition of conferences also could mean that individual shipping operators reduce the risk of sailing at less than optimal capacity by operating smaller, higher cost, ships. In this case, while there may be a larger number of competing individual shipping operators, supply — as measured by available capacity — may have diminished. Service levels might deteriorate in the absence of coordinated scheduling. The effect on prices of higher supply costs and lower quality service has to be balanced against any benefits that might flow from (more) competitive pricing. Shippers who have participated in this inquiry have stressed that service levels, in terms of reliability and frequency of service, are critical to the success of their export businesses, especially when operating under 'just-in-time' systems (see, for example, BHP, sub. 24). This suggests that dismantling of conferences could lead to significant losses (in terms of forgone trade) for Australian exporters.

The Commission does not consider that, given significant economies of scale and scope in this industry, it is possible to predict what market structure would develop in the absence of conferences, whether that structure would be more competitive and, more importantly, whether it would deliver better outcomes to Australian shippers in terms of quality and price. That said, however, it is highly unlikely that each Australian trade currently served by a conference would be served (at the current level of service) by all former conference members acting as independents.[2] In particular, on long, thin trades (such as Australia–Europe and Australia–USA), oligopoly or monopoly provision of direct services is a strong possibility.

The extent to which conferences can exert market power may be better gauged by assessing the intensity of competitive forces in liner shipping markets. If conferences are subject to intense competition (actual and potential competition) they will not be in a position to earn excess profits.[3] If conferences are subject to sufficiently strong competition, they must operate efficiently in order to survive. In other words, provided competition from existing players and potential new entrants constrains the market power of conferences, conferences will be compelled to operate efficiently, to provide services that shippers demand and, moreover, to price competitively.[4]

2 At the very least, without coordination, the regular, comprehensive 'bus service' provided by the conference ceases to exist. This would tend to increase transactions costs for shippers.

3 However, excess profits could accrue in the short term — for example, during periods of strong demand growth. But excess profits also would occur in perfectly competitive industries during periods of demand growth and in such conditions are an efficient signalling mechanism for new entrants and industry expansion.

4 That is, to price competitively in the sense of not earning persistent excess profits.

Barriers to entry in liner shipping

Market power is sustainable only where there are barriers to entry (or exit). Potential barriers to entry include regulatory and other essentially man-made or institutional barriers, or economic barriers driven by characteristics of the market.

On Australian trades there do not appear to be any significant regulatory or institutional barriers to market entry. Neither Australia nor its major trading partners reserve cargo for national flag carriers. Though some (conference) shipping operators also own port-handling operations, the Commission has not been made aware of any discrimination by stevedores with conference affiliations against non-conference operators in Australian ports. Though competition in stevedoring may be limited, an attempt by a stevedore with conference affiliations to discriminate against a non-conference carrier is likely to be undermined by a stevedore without conference affiliations.

In the absence of significant regulatory or institutional barriers to market entry, the extent of any barriers to entry in liner shipping must be a product of any cost savings and/or consumer loyalty associated with the conferences themselves. In other words, to the extent conferences allow member lines to capture economies of scale or scope, or lock in custom, the resulting cost advantages may be used to deter new entrants, especially if new entrants must incur sunk (irretrievable) costs in order to enter the market. Sunk costs may not be particularly large on Australian liner shipping trades because ships generally can be moved to different routes. Nonetheless, Australian export cargoes require unusually high refrigerated capacity which may necessitate costly, customised ships and there may be other sunk costs including marketing costs and goodwill. Overall, given a conference's incumbency advantage, it is unlikely that independent operators normally will be in a position to replicate a full conference service. In this sense, liner shipping markets are not *perfectly* contestable.

However, effective competition in practice may not require independent operators to replicate the full service of a conference. As noted by Meyrick & Associates:

> … it is fairly firmly established that individual submarkets, or collections of submarkets, are highly contestable. Moreover, the variety of potential competitors — neo-bulk specialists, air freight, multi-trade services, transhipment operations — makes it very difficult for a conference to be sure which submarkets will in fact be contested in the near future. It is also theoretically possible — and in our view quite likely in practice — that, while the conference market *as a whole* may not be vulnerable to simultaneous entry — there is no individual submarket which is safe from large-scale entry.
>
> Under these conditions, the fact that 'complete' entry is implausible is of little practical importance. The liner shipping market provides an example of 'workable

> contestability'. Since there are no regulatory barriers to entry and a newcomer to the trade would incur limited sunk costs, entry at a low to medium level is a constant threat. At the same time, given the variety of possible competing service alternatives, the conference can have no certainty as to where the next threat to its markets will come from. These two factors together render the market sufficiently contestable to impose an effective discipline on conference behaviour. (sub. 5, p. 29)

The Commission agrees that non-conference services that are perceived by the market to be close substitutes for conference services can constrain market power of conferences effectively. In addition, where market power derives from cooperative arrangements between companies, scope for rate competition between members can act as an important constraint on monopoly pricing.

Competition in practice

It is impossible to *prove* that a market is competitive and that excess profits are not earned, especially in an industry such as liner shipping where there are very high common costs.[5] In these circumstances prices are unlikely to equal marginal cost because they will contain some portion of common costs (see appendix B). In practice, pricing of container slots is likely to be driven by opportunity cost — in other words, whether one shipper's demand for slots is competing with, or complementary to, another shipper's demand for slots. For example, freight rates for the same commodity may differ on the outward and inward legs of a journey because of imbalances in cargo flows.

However, the degree of competition in a market can be inferred by market outcomes, including profitability, market shares, entries and exits, market dynamism etc.

Movements in freight rates *per se* do not give an indication of the level of competition — even in an uncompetitive market freight rates may fall to some extent as the result of a fall in demand or a reduction in production costs of existing operators. However, if freight rate reductions reflect increased supply due to new entry or new services, this could provide some evidence of competitive forces at work. Nonetheless, even if the observed decline in freight rates in recent years is not due to *increased* competition, this does not imply that shipping markets are not competitive. It implies that competition has not intensified over the period in question. Analogously, freight rate increases do not necessarily signify any reduction in market competition.

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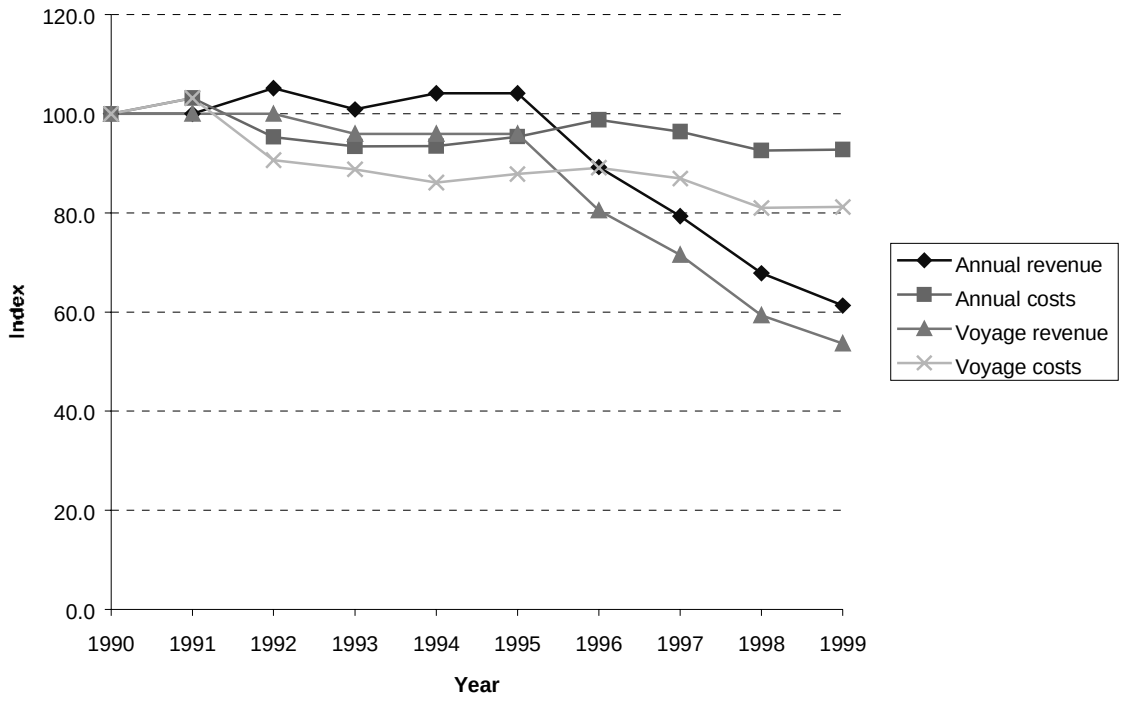
5 By the same reasoning, it would be impossible to prove that prices were not competitive.

The Commission developed a model of shipping costs and revenues to assess the extent to which price reductions might be explained by cost reductions. Figure 6.1 compares costs and revenue indices for a hypothetical 1500 TEU ship purchased in 1990 and operating since then on the South-East Asia trade. Full details of the cost model are provided in appendix E.

Figure 6.1 **Illustrative cost-revenue indices**



Data sources: Drewry Shipping Consultants 1999 and Commission estimates (see appendix E).

The model factors in cost reductions estimated from Drewry Shipping Consultants (1999) and other sources, and average price reductions on the Australia–South-East Asian trade. Though the model incorporates a return to capital in the sense of loan repayments for the purchase of the ship (at a risk-free rate of interest), the cost estimates do not include any return for entrepreneurship and risk-taking.

The main point to emerge is that while there has been a reduction in shipping costs of around 20 per cent (mainly due to reductions in stevedoring costs in Australian ports, lower bunker costs and some productivity improvements), revenue has fallen by almost double that amount. It also should be noted that the decline in revenue is fully attributable to falling prices. Moreover, the fall in prices (and revenue) precedes the Asian economic crisis, though the revenue decline certainly has been

exacerbated by that event. This cost-price squeeze leads to an estimated internal rate of return of -4.0 per cent per year.

Of course, the model does not imply that carriers' profitability has declined to this extent. It illustrates the profitability of one ship on one trade only. Carriers operate a range of ships, some owned and some leased. They also are likely to take steps to minimise the impact of falling revenue, including rationalisation of capacity on the trade and seeking productivity improvements in all aspects of their operations. Nonetheless, the model illustrates the exogenous pressures which are driving efficiency-enhancing measures on Australian and global trades.

Indicators of the presence and strength of competitive forces include:

- conference market shares and changes in these shares over time;
- evidence of competition from independent operators and transhipment operators;
- entries and exits on trade routes;
- evidence of competition within conferences;
- evidence of competition from other modes (air transport); and
- evidence of competition from freight forwarders and cargo consolidators.

Conference market shares, or market concentration, provide a starting point for considering conference market power and the extent of competitive pressures exerted on conferences. The Commission notes that a high market share may not be synonymous with market power if substitute services are available to consumers or if potential competitors can introduce a service in that trade. Changes in conference market shares also require close scrutiny. While a declining conference share indicates competition in some form, it is not of itself an indication of past monopoly profits.

Conference market shares for major Australian trades and commodities are reported in chapter 2 (figures 2.2 and 2.3) and appendix C (tables C.9–C.14). On the whole, conference shares of major inward and outward trades have declined over the 1990s, though some trades and commodities have moved against this trend. Conferences carried 64 per cent of Australia's liner imports by value in 1997-98 (compared with 73 per cent in 1989-90) and 56 per cent of liner exports by value in 1997-98 (compared with 73 per cent in 1989-90). On thinner trades (for example, Australia–Middle-East, East India–Australia) conference shares have exceeded 70 per cent and have exhibited considerable volatility from year to year. For example, the direct conference service to the Middle-East has been replaced

recently by transhipment services so that the current conference market share is zero.[6]

Conference market shares also vary by commodity group. Commodities requiring refrigeration — meat, dairy, fruit — tend to rely more heavily on conference services. As discussed above, high conference shares may or may not indicate market power depending on the alternatives available, or potentially available, to shippers. If substitute services are available, a high conference share merely may reflect a preference for the service level offered by the conference.[7]

As discussed in chapter 5, data suggest that service levels of independent operators have improved over the 1990s and the gap between service levels of conferences and independent operators has narrowed. In particular, the quality of transhipment services has improved significantly with the growth of large, specialist transhippers such as Maersk and Evergreen and development of efficient regional hub ports, particularly Singapore. With the acquisition of Sea-Land (July 1999), Maersk will become by far the largest container operator in the world, with roughly twice the container capacity of its nearest rival, Evergreen. In other words, the world's two largest container operators are dedicated transhippers.

Growth in transhipment has been driven by a range of technological developments (for example, greater efficiency in loading/unloading very large vessels and computerisation which facilitates scheduling) which have enabled transhippers to exploit economies of ship size on dense east–west routes and network economies. In other words, transhipment provides an alternative to conferences (and other direct services) as a low-cost mode of delivering reliable, frequent liner services.

For example, BHP noted that:

> Over the past five years we have also seen the development of transhipment operators who are now providing reliable and efficient hub and spoke networks around the world. These operators are a competitive alternative to direct operators and are extensively used by BHP. (sub. 24, p. 2)

The Department of the Treasury confirms this, observing that:

> Independent operators have a strong presence on all trade routes and market segments … over the last two decades, the trend had been that non-conference operators are capturing significant market share from conference operators. (sub. DR35, p. 6)

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6 This development reinforces the point that the alternative to a direct conference service may not be numerous independent operators offering similar services. It also provides evidence that conferences are subject to market pressure.

7 On the other hand, the purchase of relatively high-cost substitutes by shippers could indicate that the low-cost conference is charging monopoly prices (see Posner 1976, p. 57).

And the Queensland Government, noting that conference vessels account for a little over half of liner vessels serving the Port of Brisbane, concluded:

> It is considered that the existence of conferences in itself does not limit competition as individual conferences are competing against not only other conferences but also individual liner services. The move by several global shipping lines to enter the Australian trade as non-conference operators has provided alternatives to Australian shippers. (sub. DR38, p 1)

It is likely that the trend towards transhipment will continue apace, providing strong competition for direct service operators, including conferences. The port of Singapore, for example, is making considerable efforts to improve transhipment of refrigerated cargoes which will increase competitive pressures on direct reefer services.

Entry and exit data provide an indication of contestability of trades but, as with conference shares, must be viewed with some care. For example, zero entry and exit might indicate that the mere threat of competition is sufficient to constrain market power of conferences. Alternatively, it might indicate prohibitive entry costs. Frequent entry and exit on trades might indicate that entry and exit barriers are low but also could be the result of incumbent operators successfully driving out new entrants. However, if new entrants replace existing carriers, or if there is evidence of new entrants or services on trades as soon as profitable opportunities arise, this suggests relatively low entry and exit costs and thus effective competition against conferences.

As detailed in the various case studies in chapter 5 and appendix G, there have been quite a number of entries and exits on Australian trades over the 1990s, though mergers and takeovers appear to account for major changes in carrier line-up. Major new entrants include Evergreen and China Shipping on Australia–Asia trades and MSC on the European and North American trades. Major exits since 1993 include Baltic Shipping Company and ABC Container Line from the Australia–Europe trade. In early 1999, Cape Line entered and exited the South-East Asia trade within a matter of weeks. Overall, however, the number of lines serving all Australian trades has remained virtually unchanged at a little over thirty.

In addition, and as discussed above, independent operators have expanded and deepened their service coverage, increasingly offering services that compete directly with conference services, rather than operating at the ‘fringe’. In other words, both the quality and quantity of competition from independent operators appear to have improved significantly. Most of these independent operators appear to be committed, efficient providers — there is little support for the view that they are high-cost operators who have entered trades merely to free-ride on monopoly prices generated by conferences. While some independent shipping companies may

be subsidised, global operators such as Maersk are harnessing technological developments and low-cost production methods and thus providing genuine competition. This process appears consistent with a market which is dynamic and competitive.

Commercial incentives applying to potential new entrants apply equally to individual conference members. Though conferences still set common rates, these appear to be driven as much by the demand of some shippers for a quoted, single rate as by the conference. Increasingly, however, common rates have been replaced by individual rates, reflecting customer demands for global shipping deals with individual lines and specialised service contracts. According to BHP:

> Today, in all trades, all rates are negotiable. Traditional practices have given way to more open approaches where all Australian exporters have access and can negotiate 'blue water' freight rates with shipping lines of their choosing. (sub. 24, p. 2)

Attempts by conferences or discussion groups to 'restore' rates on some trades — in one case, the Commission understands, at the urging of Australian shippers concerned about the impact of persistent low rates on service levels — generally have failed (see chapter 5, section 5.2). In other words, conference pricing, including the pricing of individual members, appears to be market-driven.

Freight forwarding operations also place competitive pressures on shipping operators by reducing transaction costs for shippers and acting as market arbitragers. Nonetheless, freight forwarding does not appear to be as popular in Australia as overseas.

The only alternatives to liner shipping available to Australian exporters and importers are bulk shipping and air freight. At the margin, some commodities normally carried by liner shipping may be carried in bulk. For example, wool shipments have on occasions been carried by bulk carrier. The possibility of utilising bulk carriers, especially in the case of low value, high density commodities, may act as a constraint on liner freight rates. At the other end of the scale, air freight is a viable option for high value and/or time-sensitive cargo. Air freight therefore places an absolute ceiling on the price that liner shipping can charge for a very limited range of import and export cargoes.

Summary

Given economies of scale and scope in liner shipping, it is highly unlikely that, in the absence of cooperation, a competitive market equilibrium (in the sense of many small competing individual shipping operators) would be sustainable or, indeed, capable of delivering service levels shippers demand. Some form of cooperation

would occur. In these circumstances, the key to ensuring efficient outcomes for Australian shippers is the degree of market (and regulatory) constraint on conference behaviour. While the liner shipping market is neither perfectly contestable nor perfectly competitive, a range of indicators suggests that Australian trades are sufficiently contestable and competitive to ensure that conference market power is small. In particular, in recent years, the strong growth of independent transhippers has placed increased competitive pressure on direct service operators, including conferences, reducing conference market shares. Moreover, the Commission agrees with the assessment of both the Australian Consumers' Association (ACA) and the Business Council of Australia (BCA) that:

> Given the current trends in shipping — the emergence of large global shipping operators, the increasing market penetration of independents, the role of hub and spoke networking and the increased merger activity — there is no reason to believe that the level of competitive activity will be diminished. (subs DR39, p. 2 and DR40, p. 1)

Indeed the growth of these non-conference operators has led to the suggestion that conferences allow smaller operators to attain the critical mass required to compete with the 'mega-carriers'. For example, the Government of Japan has observed that:

> … if we do away with immunity from anti-monopoly laws for cooperation via international carrier agreements, it is possible that most carriers would be forced to merge with and/or buy out rival carriers in pursuit of economies of scale, and megacarriers would kick out small and medium size carriers, leading to a monopolistic or oligopolistic situation and increasing the potential for abuses of power within the market. (OECD 1999b, pp. 10–11)

On the other hand, the Department of the Treasury, the ACA and the BCA (subs DR35, p. 12, DR39 and DR40) imply that, with the development of viable alternative services, conferences are now redundant and therefore Part X can be repealed. In the Commission's view this argument is flawed. First, while transhipment services and services of independent direct operators are close substitutes for conference services, they are differentiated in some aspects. Disallowing conferences would reduce shippers' choice. Second, as the Department of the Treasury concedes, there always will be some form of cooperation in international liner shipping. The Commission queries why a conference with, for example, the same market share as a single operator providing a similar service would restrict competition any more than the single operator. It may or may not be the case that conferences gradually will be replaced by other forms of cooperation which may be better-suited to new technologies. However, even if alternative technologies were to displace conferences, this would not warrant regulatory interference to pick or accelerate the winning market structure.

Given the economics of liner shipping services, the absence of significant barriers to entry to liner trades, consistent evidence of intense competitive forces in liner

shipping markets globally, and the fact that Part X, in allowing but not enforcing industry cooperation, does not constrain these forces, the Commission is of the view that Part X has not restricted competition in Australian liner trades to any significant degree.

Minimal regulation and promotion of commercial dispute resolution

Under Part X, freight rates and service levels are determined through commercial negotiation, with safeguards built in to protect the interests of Australian shippers.

Government influence in commercial negotiations is confined to exercising 'moral suasion' via the provisions of Part X which enable the Minister or his/her representative to attend negotiations. However, that moral suasion is reinforced by the Minister's power to deregister all or part of an agreement in certain circumstances (see chapter 4), although this has not occurred to date.

Instead of direct government supervision, Part X provides for the peak shipper body (APSA) to negotiate terms and conditions with carriers. APSA is not obliged to participate in negotiations and, in practice, freight rates and service levels are mostly negotiated between carriers and secondary shipper associations or large individual shippers. APSA's involvement has tended to focus on negotiating general rate increases, service levels and surcharges such as currency and bunker adjustment factors, as well as port service and terminal handling charges (LSS, sub. 10, p. 14).[8]

Part X also contains several provisions intended to provide additional safeguards for shippers and Australian flag vessels — such as the unfair pricing and price discrimination provisions, and the process for declaring non-conference carriers with substantial market power (see chapter 4). While these provisions have not been invoked officially, they provide further opportunities for regulatory intervention. These provisions are examined further in chapter 8.

The process of policing possible breaches of Part X is deliberately light-handed. Several provisions of Part X provide that Ministerial orders can be made only after consultations have been undertaken with conferences or individual carriers. The purpose of these consultations is to obtain undertakings from conferences and carriers to cease certain behaviour or to take specific actions.

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8 Following the TPC (1993a, p. 17), terminal handling charges are defined as container port charges levied by container liners for the service of moving a container from a ship to a position some distance away within the confines of the container terminal at the port of discharge to enable clearance from the port and vice versa at the port of loading.

Participants considered that Part X has been successful in encouraging commercial resolution of disputes, without the need for government intervention. According to the Department of Transport and Regional Services (DTRS):

> Part X is a simple system that relies on conferences and exporters reaching commercially acceptable outcomes through negotiations. It is largely a self-regulating system … (sub. 3, p. 5)

Similarly, LSS considered that:

> Part X, since its inception in 1966, has worked extremely well in resolving issues commercially rather than seeking government intervention or regulatory intervention. (trans., p. 53)

Where commercial negotiations fail, shippers have the ability to initiate an ACCC investigation into the efficiency of liner services and whether carriers have met their statutory obligations under Part X. Indeed, LSS argued that the threat to initiate a complaint had encouraged commercial resolution of disputes (trans., pp. 53–54).

Given the record of falling freight rates and increasing service levels (see chapter 5), it is perhaps not surprising that only three formal investigations into shippers' complaints have been conducted by the ACCC/TPC under Part X.[9] Another view is that the low number of complaints may reflect flaws in the complaints process and the remedies available under Part X. For example, in a report to the Minister on its investigation of an APSA complaint concerning terminal handling charges, the TPC (1993a, p. 3) expressed the concern that Part X does not provide a flexible basis for the commercial resolution of disputes on terms that are acceptable to all parties and which also preserve the benefits from conferences. The TPC also considered that the dispute took far too long to resolve, due in part to the nature of the complaints process and the lack of flexible remedies.

Taken together, discussions with shippers and the low number of formal complaints suggest that disputes have generally been resolved through agreement between the parties. An attraction of Part X is that where commercial negotiations fail to resolve disputes, shippers themselves (rather than third-parties) have scope to invoke the complaints process.

9 The ACCC may have also undertaken some informal investigations in response to complaints. For example, LSS indicated that the ACCC had looked into the introduction of documentation fees by some shipping agents but decided not to proceed with a formal investigation (trans., p. 52).

International compatibility

Participants considered that Part X is broadly consistent with international regimes for regulating liner shipping.[10] This conclusion mirrors the finding of the previous review of Part X (Brazil *et al* 1993, p. 44) which found that though there were differences in detail, there was a high degree of compatibility between the regulatory regimes in the United States, Europe and New Zealand. As noted in chapter 4, the liner shipping regimes of Australia and many other countries share a common feature — shipping conferences are given limited exemptions from national competition laws subject to a variety of safeguards.

The Commission is not aware of any instance where differences between the liner shipping regimes of Australia and another country affected outcomes or the resolution of disputes, to the detriment of Australian shippers. In discussion, participants stated that carriers conform with the regime that imposes the most stringent requirements where countries at opposite ends of a trade route have different regulatory requirements.

There is no direct evidence of this approach having adversely affected the outcome of dealings between carriers and Australian shippers. A possible exception relates to the claim made by NACON, in the context of the TPC investigation of a complaint by APSA, that the anti-rebate provisions of the United States *Shipping Act 1984* prevented it from offering a refund to Australian shippers as compensation for breaching the requirements of Part X. However, LSS stated that it did not consider that providing for pecuniary penalties (including compensation) in the event of a contravention of Part X, would contravene US shipping laws (sub. DR28, p. 5).

Australia's liner shipping regime appears to be compatible with those of our major trading partners.

Countervailing power

As discussed in appendix B, it is in Australia's interests to exercise countervailing power against foreign suppliers in order to obtain lower prices and/or improved service levels from foreign-owned shipping operators. However, care must be taken that actions do not exceed the limits of that power — in this situation, outcomes for Australian shippers may deteriorate rather than improve.

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10 See submissions by the Australian Chamber of Shipping (sub. 1, p. 2), LSS (sub. 10, p. i), Meyrick & Associates (sub. 5, p. 4), and DTRS (sub. 3, p. 14).

Part X attempts to bolster the countervailing power of Australian exporters by allowing them to form buying coalitions and imposing obligations on conferences to negotiate and provide information. Shippers also can call for an investigation of conference behaviour which may lead to deregistration of the conference.

The question is whether these arrangements are adequate. Participants have argued that the provisions as they stand have promoted improved outcomes (see section 6.1 above).

However, it has been suggested that shippers may be loath to make a complaint under Part X if the only penalty available is full or partial deregistration of the conference. Consequently, strengthening the penalties under Part X may enhance the countervailing power of shippers indirectly, through improving carrier compliance with Part X obligations. A range of possible modifications to Part X, designed to improve the negotiating power of importers and exporters, are examined in chapter 8.

By the same token, Part X is unlikely to provide a framework which promotes *excessive* use of countervailing power. Essentially it allows exporters to exercise their discretion. Moreover, there is no evidence that carriers consider the obligations imposed on them by Part X as being too onerous. Indeed, Liner Shipping Services (sub. 10) has proposed a number of modifications to Part X, some of which would appear to have the effect of strengthening the obligations on carriers (see chapter 8).

Predictability of outcomes

The terms of reference for the inquiry require the Commission to analyse *inter alia* the effect of Part X on the 'predictability of outcome on the standards of shipping services provided'. This requirement could be interpreted in different ways — for instance, it could require the Commission to examine whether the minimum service levels agreed between shippers and conferences under Part X will be met. Alternatively, it could require an examination of whether shippers' varied and changing demands for liner services will be met under Part X.[11]

Part X seeks to provide shippers with some assurance that demand for liner services will be met by requiring conferences to negotiate minimum levels of service with designated shipper bodies, and to provide advance notification of changes in negotiable terms and conditions. As noted in chapter 4, a conference agreement

11 The performance of Part X in terms of the quality of shipping services available to Australian shippers is examined in chapter 5.

cannot be registered unless it sets out the agreed minimum levels of service to be provided.

In submissions to this inquiry and in discussions, shippers considered that Part X gives a high degree of predictability of outcomes in terms of conferences meeting agreed minimum service levels. For instance, shippers' representative body, APSA, stated that:

> When minimum levels of service agreements have been finalised with APSA the liners or Conferences have an obligation to perform. Except in cases of loss of vessel or lockout of ports by strikes, minimum levels of service agreements promote predictability. (sub. 11, p. 14)

Trends in the quality of liner shipping services as well as the port coverage of conference and non-conference lines were examined in chapter 5.

The second important aspect of predictability is the degree of certainty for shippers provided under Part X that their varied and changing demands for liner services will be met. Some shippers export relatively large quantities throughout the year (such as Ricegrowers Co-operative) and require the regular services offered by conferences and some independents. Seasonal shippers, such as seasonal horticultural exporters, require frequent services for part of the year only. Other shippers export relatively small volumes infrequently. And, of course, the quantum and nature of shippers' requirements change over time.

As discussed in section 6.1, Part X does not appear to have prevented these varied and changing demands for shipping services from being met. Part X does not oblige shippers to use conference services. On all Australian trades on which conferences operate, shippers have a choice of alternative, direct or transhipment services. Moreover, the regular service provided by the conference enables diverse requirements to be met at low cost.

Taken together, the views of shippers and the choices available to them suggest that Australian shippers have a reasonable assurance that their varied demands for shipping services will be met.

Flexibility

There are two important dimensions to assessing the flexibility of Part X. One dimension is the flexibility of the services provided to Australian shippers. This particular dimension was considered in the previous section. The other aspect of flexibility relates to Part X processes.

From submissions and discussions, participants generally considered that Part X provides a flexible approach to regulating international liner shipping. For instance, Liner Shipping Services considered that Part X:

> … has proved itself in dealing successfully with the many difficult commercial issues that arise between shippers and shipowners from time to time without the need for direct government intervention. [And that] The Part X framework … is well geared to meet [un]foreseen challenges in the international liner shipping market … (sub. 10, p. ii)

Similarly, DTRS said that:

> Part X provides a flexible means of dealing with changes in the way the shipping industry operates … [For instance] Part X is capable of dealing with a wide range of liner arrangements. The definition of a 'conference' in Part X is very wide, and a variety of types of agreements, including discussion agreements, joint management agreements and slot exchange agreements, as well as more traditional liner conferences, have been scrutinised and registered. (sub. 4, p. 26)

As noted by DTRS, the legislative definition of a conference is wide, thereby permitting a wide range of cooperative agreements to be registered.[12] In this way, Part X has been able to cope with the changing nature of shipping arrangements, notably the increased use of consortia and slot exchange agreements.

Part X also gives the responsible Minister and shippers certain powers in relation to registered conference agreements (see chapter 4). In principle, these powers could be invoked where existing conditions or changing circumstances alter the desirability of particular conference arrangements. For instance, the Minister or shippers may initiate an investigation of conference arrangements by the ACCC.

However, the investigation process has not been used extensively to date — only three formal investigations by the ACCC under Part X have been initiated. As noted earlier, the infrequent use of the complaints process by shippers may reflect inadequate remedies and incentives for the process to be used in this manner by shippers. For example, the ACCC's role is confined to investigating the matter and reporting to the Minister. Only the Minister has powers in relation to conference agreements and these are limited to the power to deregister agreements or particular provisions of them.[13]

As noted by the TPC (1993a, p. 91) deregistering an agreement may not be a suitable remedy if there is a reasonable chance that a conference would choose to disband thereby causing significant disruption to trade. In addition, deregistration

12 See section 10.02(1) of the TPA.

13 The case for strengthening penalties under Part X is examined in chapter 8.

would not prevent a conference from submitting a new, similar agreement for registration. The new agreement presumably would be registered, providing it met the basic requirements under the Act in terms of content.[14] Thus the remedies available under Part X may be insufficiently flexible to deal with a broad range of circumstances.

Several participants called for the penalties and remedies available under the Act to be strengthened.[15] DTRS considered that part of the impetus for shippers' calls for stiffer penalties for conferences is that, although commercial negotiations had successfully resolved most disputes between shippers and carriers, some of the agreed settlements may not have allowed shippers to recover extra costs that might have been imposed on them (trans., p. 92).

Possible improvements to the remedies available under Part X are considered in chapter 8.

Transparency

A number of the processes established under Part X are transparent. For instance, once a conference agreement has been scrutinised and approved by the Registrar of Liner Shipping, details of the agreement are placed on a register that is available to the public. However, the TPA provides for commercially sensitive information to be removed from the publicly available copy of agreements, provided reasons are given for the confidentiality claim and an abstract of the confidential information is provided.[16]

Although not formally required by the TPA, in practice the ACCC has conducted its investigations under Part X in an open and transparent manner.[17] For example, in its investigation of a complaint by APSA relating to terminal handling charges, the TPC (the predecessor to the ACCC), sent an issues paper to parties with an interest

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14 However, as the Registrar of Liner Shipping pointed out, because of the time that elapses between submitting an agreement for registration and the exemption coming into force, there may be a window of two to three months where conduct under a deregistered agreement would be exposed to the provisions of Part IV. Consequently, carriers would be forced to suspend conference arrangements, possibly at some cost to the carriers, to avoid allegations of collusive behaviour. (sub. DR29, p. 6)

15 See, for example, DTRS (sub. 3), LSS (subs. 10 and DR28), APSA (subs. 11 and DR27) and ACCC (sub. 16, p. 4).

16 See Part X, division 6, subdivision C (Confidentiality requests).

17 The only requirement under Part X is that the ACCC maintain a public register of its investigations under Part X (see section 10.12 of the TPA).

in the matters under investigation (TPC 1993a, p. 10). Copies of public submissions received in response to the issues paper were placed on a public register.

APSA (sub. 14, p. 35) considered that Part X also provides for transparency in freight negotiations, through the requirement for conferences to provide to shippers any information reasonably required for negotiations. Liner Shipping Services went further, arguing that:

> Given the monitoring and oversight by the Australian Peak Shippers Association, Part X provides much needed transparency of Conference/Consortia operations, particularly in terms of minimum service levels and the impact on shippers of day-to-day operations. (sub. 10, p. ii)

However, in a submission to the Brazil Review, the TPC argued that independent scrutiny of outcomes under Part X is inadequate and that third-party monitoring of the different types of conference agreements is needed to determine whether the overall objectives of promoting efficient liner shipping services are being met (1993b, p. 21). Nonetheless, it should be noted that, including the current inquiry, the overall performance of Part X has been reviewed four times since 1977.

Not all of the procedures established by Part X are open to participation by a broad range of interests. Most notably, the process for registering conference agreements is not open to public input. There are no constraints preventing the Registrar of Liner Shipping from seeking public comment on conference agreements submitted for registration but, in practice, this is not done. However, copies of agreements are routinely sent to the ACCC prior to final registration, providing it with an opportunity to comment on whether the agreement meets the criteria for registration. (sub. DR29, p. 5) APSA also has an opportunity, on behalf of shippers generally, to comment on agreements before they are registered. Nevertheless, individual agreements are not required to pass a 'public interest test' to determine whether rates are efficient and service levels meet the reasonable needs of shippers. Instead, Part X provides the scope for an *ex post* public interest assessment of conference agreements (but only if initiated by the Minister or shippers).

The perceived lack of transparency in the registration process has led to calls for the introduction of a transparent public process for assessing whether exemptions should be granted to conference agreements (TPC 1993b). Possible modifications to the registration process are examined in chapter 8.

Regulatory costs

The regulatory costs of Part X include administrative costs (including the costs of delays) incurred by shippers, the ACCC and the Department of Transport and

Regional Services (Registrar of Liner Shipping). Some costs, such as those associated with preparing agreements (and variations to agreements) would probably be incurred by carriers anyway and thus are not attributable to Part X directly.

Due to the emphasis placed on commercial resolution of disputes as well as the nature of the exemptions for conference agreements, regulatory costs under Part X are likely to be low.

The direct costs of Part X to shippers are insignificant. It costs shippers nothing to seek registration of a shipper body under Part X. Since the establishment of shipper bodies is not subject to a public interest review, the corresponding costs to government also are likely to be low.

Concerns about the level of costs imposed on carriers (such as the cost of writing and registering agreements) are relevant to the extent that they will be passed on to shippers. That said, the costs to carriers of seeking registration of conference agreements are modest ($570 per agreement), as are the costs to government of administering registration procedures. For instance the DTRS stated that:

> There is a relatively small workload in administering Part X. The function of the Registrar of Liner Shipping requires about 20 per cent of one staff year and that of an 'authorised officer' a further five per cent of one staff year. (sub. DR29, p. 4)

In principle, regulatory costs of Part X should include indirect imposts arising from any distortions created by Part X (such as the economic cost to Australia of anti-competitive conduct engaged in by foreign-owned carriers). However, for the reasons set out in sections 6.1 and 6.2, the Commission considers that the competitive characteristics of international liner shipping markets and the choice available to Australian shippers have been sufficient to limit potential adverse effects of conference activities.

6.3 Conclusion

The principal driver of favourable price and service outcomes for Australian shippers has been competition in global liner shipping markets. Part X has impeded neither market forces nor market arrangements which promote the diversity, frequency and reliability of service that shippers demand, at internationally competitive freight rates.

To the extent that Part X has regulated market behaviour, it appears to have promoted the interests of Australian exporters. Evidence from shippers suggests that scope for collective rate negotiation, the requirement for shipping operators to

negotiate minimum service levels and to provide information to shippers, has bolstered their negotiating position. For example, the Tasmanian Government claims 'the major beneficiaries of Part X are Australian exporters and not the shipping companies that comprise conferences' (sub. 25, p. 1). Of course, that outcomes have been satisfactory under Part X does not necessarily imply that Part X is the *best* regulatory option. Major alternatives are considered in chapter 7.

Assessed against the criteria for regulation outlined in chapter 3, Part X:

- does not appear to have restricted competition in liner shipping markets in the sense of hindering entry and exit and impeding competitive forces;
- embodies a comparatively hands-off approach, relying largely on market forces (including shipper buying power) to regulate conferences;
- leaves decisions about the exercise of countervailing power to shippers (whose interest in obtaining efficient liner shipping services appears to be aligned with the national interest) while providing exporters with some additional negotiating clout;
- appears compatible with overseas regulatory regimes;
- provides for predictable service outcomes for Australian shippers; and
- is low cost.

However, Part X does not impose an explicit public examination process and its dispute resolution process and penalty provisions may be somewhat limited and inflexible.

Possible changes to Part X, if it were to be retained, are discussed in chapter 8.

7 Alternative approaches

Part X has allowed ocean carriers to form efficiency-enhancing conference arrangements whilst providing countervailing safeguards to Australian shippers to protect against any abuse of market position arising from those arrangements. The key question addressed in this chapter is, can the available alternatives deliver better outcomes than Part X, or arrive at similar outcomes by a more efficient process.

7.1 Reform options

The principal alternatives to retaining Part X in its current form (or in a modified form — see chapter 8) are:

- abolish Part X, thus requiring that ocean carriers and shipper bodies either cease to operate as conferences and shipper bodies, or seek individual exemptions through the authorisation process established under Part VII of the Trade Practices Act (TPA) if they wish to continue as conferences and shipper bodies;
- abolish Part X and amend the TPA to create a regime for granting block authorisations;
- replace Part X with a non-legislative mechanism such as an industry code; or
- replace Part X with a notification process for the liner shipping industry.

This chapter evaluates these options against the regulatory criteria outlined in chapter 3.

7.2 Authorisation

The major alternative is the repeal of Part X, which would result in the application of Part IV of the TPA, with scope for approval of conference and shipper arrangements via authorisation (Part VII).

The authorisation process provides for a transparent, case-by-case public review of exemptions from the anti-competitive conduct provisions embodied in Part IV of the TPA. Under Part VII of the TPA, anyone wishing to engage in conduct that risks

breaching the provisions of Part IV may apply to the ACCC for an authorisation. An authorisation is a right of immunity from prosecution for the applicant covering the proposed conduct. It is designed to provide a safeguard against applying the prohibitions on anti-competitive conduct, where it can be shown that the public benefits of the proposed conduct outweigh any anti-competitive detriment.

While the ACCC has primary responsibility for assessing applications for authorisation, its decisions may be subject to review (on application by an interested party) by the Australian Competition Tribunal (hereafter 'the Tribunal').[1]

Key features of the authorisation process

Three key elements of the authorisation regime are relevant to assessing how authorisation may apply to the liner shipping industry, namely:

- the process of obtaining an authorisation (and what form an authorisation in liner shipping would take);
- processes for reviewing and revoking authorisations; and
- the types of conduct that can be authorised.

Obtaining an authorisation

The processes that the ACCC must follow in assessing authorisation applications are set out in the TPA and are designed to ensure a rigorous, transparent and flexible process of reviewing exemptions from Part IV. To this end, following receipt of an application for authorisation the ACCC is required to:

- advertise receipt of the application and inform interested parties;
- invite submissions on the application from members of the public;
- release a draft determination outlining the ACCC's interim decision and giving reasons;
- provide interested parties with an opportunity to hold a conference on the draft determination;
- publish a final determination; and
- maintain a public register of documentation relating to the matter.

1 The Tribunal consists of a President, who must be a Federal Court judge, and 'lay' members who are appointed on the basis of their experience in the law, economics, industry or commerce.

A key feature of the authorisation process is that it requires those seeking legal immunity to demonstrate, to the ACCC's satisfaction, that their proposed conduct is likely to lead to a net benefit to the public. This is achieved under Part VII by the legislative requirement that the ACCC assess applications for authorisation against prescribed tests, namely whether:

- the public benefits arising from the proposed conduct outweigh the 'detriments' constituted by any lessening of competition in the relevant markets; and
- the public benefit arising from the conduct is such that the conduct should be allowed.[2]

The first of these tests applies to all forms of conduct which may be authorised, whereas the second test has more limited application.[3] For practical purposes, there is little difference in the way the ACCC and the Tribunal apply these tests (ACCC 1995b, p. 9).

The explicit public benefit tests are a key feature of Part VII, distinguishing it from Part X. Both processes provide for public interest assessments of conference and shipper agreements. However, whereas authorisation provides for *ex ante* reviews, those under Part X only occur *ex post*, and at the initiation of the Minister or shippers. Under Part X limited exemptions from Part IV may be granted to registered conference arrangements without the need for a case-by-case public interest assessment prior to registration. However, a registered agreement may be subjected, at the initiation of the Minister or shippers, to a review by the ACCC of whether particular conference agreements are causing harm to shippers (or a public detriment).[4] Under Part VII, shipping lines and shippers seeking authorisation would be required to convince the ACCC, and possibly the Tribunal, that the public benefits of each particular liner shipping industry arrangement outweigh the costs.[5]

Typically, the ACCC and the Tribunal have taken a broad view of what constitutes a public benefit[6] and a public detriment. In a recent case the Tribunal stated that:

> Public benefit has been, and is, given a wide ambit by the Tribunal as … anything of value to the community generally, any contribution to the aims pursued by society

2 See section 90(6) to (9) of the TPA.

3 The second test applies to exclusive dealing (under section 45), secondary boycotts and related arrangements (sections 45D and 45E), third-line forcing (sections 47(6) and 47(7)), and mergers (section 51) only.

4 Part X has also been subject to periodic reviews of its overall operation.

5 For the reasons set out below the Commission considers that this process would be followed by the ACCC for each conference agreement (rather than for groups of agreements).

6 The TPA does not define what constitutes a public benefit.

including as one of its principle elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.[7]

To date, the ACCC has not undertaken a detailed examination of the public benefits and detriments of international liner shipping industry arrangements. However, the ACCC has looked at a variety of similar arrangements in domestic industries. According to Miller (1999, pp. 549–566), the ACCC has acknowledged the public benefits arising from arrangements such as: capacity allocation, cooperative buying, joint ventures, rationalisation agreements, and recommended and uniform pricing. Whilst not conclusive, the approach of the ACCC in relation to other industry arrangements is suggestive that a wide range of benefits of conference and shipper arrangements could be considered by the ACCC and Tribunal in assessing authorisation applications.

However, demonstrating that particular arrangements, such as uniform pricing and others common in liner shipping, deliver public benefits would not be sufficient to obtain an authorisation. The ACCC may refuse to grant an authorisation where it considers that the applicant has been unable to demonstrate that the public benefits of the proposed conduct outweigh the anti-competitive detriment.

Alternatively, the ACCC may seek to redress the imbalance between benefits and costs by imposing conditions on an authorisation and/or by seeking enforceable undertakings from the applicants as a condition of authorisation. For instance the ACCC may require the applicant to alter the proposed conduct or agreement in ways that the ACCC regards as necessary in order to satisfy the public benefit tests (Miller 1999, p. 571).[8] Failure to comply with conditions imposed by the ACCC may lead to revocation of an authorisation. In addition, the ACCC may accept a written undertaking given by an applicant relating to an authorisation or one of its elements.[9] These undertakings are enforceable in the courts.

Whilst the ACCC has considerable discretion over the factors that it considers when assessing authorisation applications and how it evaluates them, its power is not unlimited. This is because the TPA also provides for any interested parties to apply to the Tribunal for a review of ACCC decisions.

If an appeal is lodged, the Tribunal's role is to re-consider the application in its entirety, not just to examine issues disputed by the parties. The Tribunal may reaffirm, vary or overturn a decision of the ACCC. Thus in evaluating potential

7 *Re 7-Eleven Stores Pty Ltd* (1994) ATPR 41-357 at 42, 677.

8 See section 91(3) of the TPA.

9 See section 87B of the TPA.

outcomes for liner shipping services under Part VII, it is important to consider the likely approaches of the Tribunal and the ACCC.

Usually, the immunity from the provisions of Part IV does not commence until a final authorisation is granted by the ACCC or the Tribunal. This process may take a considerable amount of time and so, to minimise disruption to industry, the TPA provides the ACCC and Tribunal with the ability to grant an interim authorisation. In principle, this may enable the ACCC to grant an interim authorisation to all liner shipping arrangements in their current form, prior to a final decision.[10] According to the ACCC, a strong case may exist for granting an interim authorisation in circumstances where an industry is making a transition to a new regulatory regime (ACCC, pers. comm., 5 May 1999).

In principle, an application for authorisation of liner shipping industry arrangements could take a number of forms.

The first option is to require each shipper body and the members of conferences, consortia and discussion agreements to submit separate authorisation applications. There are currently approximately 60 registered conference, consortia and discussion agreements in effect and 12 registered designated shipper bodies. This first option implies a ceiling of around 72 separate authorisations.[11]

A second option is for shippers and carriers jointly to develop a single detailed industry code describing the types of allowable conduct (such as price fixing, revenue pooling and vessel sharing), the circumstances in which carriers would be able to engage in allowable conduct, carriers' obligations with respect to shipper bodies, mechanisms for commercial dispute resolution, and a notification mechanism for minor changes to conference agreements. The code could allocate to the ACCC the role of determining whether changes are minor or necessitate a thorough review of the authorisation.[12]

The Department of the Treasury proposed a third model involving industry agreeing:

> … on a code which encompasses the core restrictive practices to be adhered to by all conferences. Individual shipping lines and conferences could gain protection through authorisation of the code, but would be free to tailor individual agreements to individual conference needs. Additional provisions in such agreements that contain

10 See sections 91(2) to (2A) of the TPA.

11 In practice, members of some of the shipper bodies and conferences may choose to disband rather than incur the costs associated with seeking authorisation, implying that the actual number of authorisations required under this option would be less than 72.

12 This option would involve a single, albeit extremely complex, authorisation.

> restrictive practices beyond those already authorised may require separate authorisation. (sub. DR35, p. 24)[13]

A fourth option is for the industry to submit a set of similar (but not necessarily identical) agreements covering, for instance, each major trade. Each separate shipper body would be required to submit an application for authorisation under this option.

Under any of these options, carriers' obligations, similar to those imposed under Part X, could be given effect through conditions on authorisation or enforceable undertakings.

The two options involving industry codes (options 2 and 3) probably would be less costly for carriers and shippers than the alternative of a system of agreements covering individual trades (option 4). Depending on how the ACCC examines the authorisation applications, a code may have the potential advantage of enabling the assessment of benefits and detriments to occur at the level of Australia's total export and import trades, rather than on an individual, trade-by-trade or commodity-by-commodity basis.

A disadvantage of the industry code approaches is that the ACCC may require that the parties to the code specify in considerable detail the types of agreements and practices which are permitted or proscribed under the codes. Also, the Commission anticipates that the ACCC is unlikely to accept, without substantial modification, an industry code arrangement that is seen to have the effect of placing the regulation of potentially anti-competitive conduct in an industry under the control of that industry.[14] Part VII requires that individual exemptions be reviewed on a case-by-case basis by the ACCC. In examining an authorisation application the ACCC's approach is to assess the proposed conduct in the context of prevailing circumstances. A proposal involving a code could be viewed as violating the requirement for case-by-case assessments and delegating the ACCC's role of undertaking public benefit assessments to the industry.

While it is not possible to determine with any precision how many authorisation applications would be required to cover liner shipping nor the nature of the required

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13 Presumably this option would require more than one authorisation application but considerably less than the 72 required under the first option.

14 Using the model suggested by the Department of the Treasury to illustrate, the ACCC may only allow a code containing a small number of 'core' restrictive practices — implying a large number of separate authorisation applications would be required. 'Non-core' practices that they may wish to evaluate on a case-by-case basis could include conduct subject to a *per se* prohibition under the TPA such as price fixing, as well as certain types of arrangements such as discussion agreements.

content of these applications, the Commission considers that the approach most likely to be acceptable to the ACCC would be for a set of separate, although linked, liner shipping agreements.[15] Each agreement would need to be assessed on a case-by-case basis by the ACCC.

Review and revocation

Due to the rapidly changing nature of liner shipping industry alliances and services, it is important that any system for regulating the industry be sufficiently flexible to accommodate changes in a timely manner.

To permit a degree of flexibility, Part VII enables holders of an authorisation to make minor variations. Minor variations are those that do not result in a material change in the effect of the authorisation, such as changes which increase the public benefits of the arrangements or reduce the public detriments. The ACCC can approve minor variations after giving all interested parties an opportunity to make submissions about the proposed changes. From this it appears that Part VII could easily accommodate minor variations in liner shipping industry arrangements, once they were authorised.

Part VII provides additional flexibility to respond to changes in circumstances through establishing a process for revoking an authorisation that can be initiated by the ACCC.[16]

The ACCC has the power to revoke an authorisation where:

- it was granted on the basis of materially false or misleading information;
- a condition attached to the authorisation has been violated; and/or
- there has been a material change in circumstances.

The last point has created the most consternation amongst shipping lines and shippers (see the discussion below on *Uncertainty for industry*). Considering whether there has been a material change involves determining whether the change of circumstances is likely to have had a significant impact on the public benefits or detriments of the authorised conduct.[17] Miller (1999, p. 575) argues that any particular change of circumstances should be regarded as 'material' only if it reduces the public benefits or increases the detriments of the conduct. However, it has not been the practice to date to subject each change of circumstances which

15 The workability of a liner shipping industry code is discussed further in section 7.4.

16 See section 91B of the TPA.

17 *Media Council of Australia* (1996) ATPR 41-497 at 42, 241.

existed at the time of authorisation to an analysis of how the change bears on the public benefits and detriments. Instead, the practice has been to identify the various changes within the industry, and the environment in which it operates, and then to reach an holistic conclusion on whether those changes might lead to a different assessment of the balance of benefits and detriments of the conduct that was authorised.[18]

If the ACCC finds that there has been a material change in circumstances it may decide to revoke, vary or replace the authorisation. The authorisation may be revoked if the ACCC and on appeal, the Tribunal, consider that the public benefits of the proposed conduct no longer outweigh the anti-competitive detriment.

It is now common practice for authorisations to be subject to a time limit.[19] Expiration of the time limit provides the ACCC with an opportunity to review the authorisation without establishing that grounds for a review have been triggered.

What types of conduct can be authorised?

Similar exemptions to those granted to shipping companies and shippers under Part X potentially are available under Part VII of the TPA.

As noted in chapter 4, members of registered conferences and designated shipper bodies are exempt from section 45 (excluding section 45D) and section 47 of the TPA.

Authorisation is available for a wide range of conduct, including:

- agreements which constitute exclusive dealing (covered by section 47 of the TPA) such as loyalty agreements between a shipper and a carrier;
- agreements which contain exclusionary provisions (section 45 and section 4D) such as agreements between carriers to offer a discount to shippers who enter into loyalty agreements;
- agreements which might substantially lessen competition (section 45) such as some market sharing and revenue pooling arrangements;
- price fixing involving goods and services (section 45A);[20]

18 *Media Council of Australia* (1996) ATPR 41-497, *AGL Cooper Basin Natural Gas Supply Arrangements* (1997) ATPR 41-593 and *7-Eleven Stores* (1998) AcompT 3.

19 In *North West Shelf Project* (1998) ATPR (Com) 50-269 the ACCC said that it had 'grave reservations' about issuing open-ended authorisations. It granted authorisation to partners in a proposed joint venture to develop a natural gas project to market gas jointly for only seven years.

- resale price maintenance (section 48);[21] and
- mergers that lead to a substantial lessening of competition in a market (section 51).

Authorisation is not available for misuse of market power (section 46 of the TPA).

Major concerns about authorisation

In the course of this inquiry several concerns about the potential application of Part VII to international liner shipping were raised by participants including:

- whether the same matters covered by Part X could be covered in an authorisation;
- whether the ACCC is likely to authorise core elements of conference agreements, particularly the price fixing provisions;
- increased regulatory uncertainty arising from the ACCC's ability to revoke authorisations, and uncertainty about the process, the criteria the ACCC would apply and the conditions that would trigger reviews;
- the compatibility of authorisation with overseas liner shipping regimes; and
- relatively high administrative and compliance costs.

This section examines the validity of these concerns.

Would price fixing be authorised?

While the TPA explicitly permits price fixing of goods and services to be authorised, several participants suggested that the ACCC would be unlikely to authorise price fixing provisions of conference agreements, principally because under Part IV of the TPA, price fixing is a *per se* offence.[22] The concern was that such actions by the ACCC (and implicitly the Tribunal) would cause the breakdown of conference arrangements by prohibiting one of their central elements. For instance, the Department of Transport and Regional Services said:

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20 However, as discussed in the following section, there is some doubt about whether the ACCC would authorise price fixing in practice, due to the *per se* nature of the offence under Part IV.

21 Resale price maintenance is the practice of requiring purchasers of a product (under threat of loss of supply or other penalties) to agree not to resell the product at less than a pre-determined price (ACCC 1995a, p. 27).

22 See submissions by DTRS (sub. 3), LSS (sub. 10) and APSA (sub. 11). A *per se* offence is one that is deemed to lead to a substantial lessening of competition rather than requiring an analysis of the actual effect of the offence on competition.

> … it is by no means clear that joint price setting, a key factor in some conference agreements and one which is a *per se* offence under Part IV of the TPA, would be authorised [by the ACCC]. (sub. 3, p. 24)

These comments appear to echo the views of the Brazil Review which stated that:

> … in practice, the Part VII authorisation process would be hostile to price fixing. (1993, p. 113)

The ACCC stated in discussions with the Commission that the *per se* nature of the price fixing provisions of Part IV creates the strong presumption that such conduct would have a major detrimental effect on society. The ACCC also said that price fixing conduct could be authorised provided the applicant demonstrated that the public benefits of the conduct outweighed the costs (ACCC, pers. comm., 5 May 1999). While not ruling out authorisation of price fixing provisions, this does suggest that the hurdle to be set by the ACCC (demonstrating offsetting public benefits) may be somewhat higher for conduct that is subject to a *per se* prohibition.

The Commission considers that any across-the-board action to eliminate price fixing provisions from conference agreements could reduce the potential efficiency gains arising from conferences, to the detriment of Australian shippers. Any presumption of major detriment due to price fixing, without a proper assessment of public benefits and costs, would be inconsistent with the public benefit test required under a review of an application for authorisation.

Uncertainty for industry

Several participants were concerned that moving to authorisation for liner shipping arrangements would increase regulatory uncertainty for carriers because of the greater discretion available to the ACCC and the Tribunal. For instance, the Department of Transport and Regional Services said:

> Of particular concern to liner shipping companies is uncertainty of the outcome of applications for authorisation under Part VII of the TPA. (sub. 3, p. 24)

Similarly, Liner Shipping Services stated that:

> Authorisation would have an uncertain outcome and indeed, the ACCC has power to review and withdraw an earlier authorisation if it believes that there has been a change in material circumstances. (sub. 10, p. iii)

The nature of the public interest is relevant in assessing the degree of regulatory uncertainty and any resulting costs under authorisation. As noted in chapter 3, the public interest in this review generally will lie in achieving lower freight rates

and/or improved liner services to meet the diverse requirements of Australian shippers. Concerns about the effects of authorisation on carriers are only relevant to the extent that the cost and quality of liner services are affected.

Increased regulatory uncertainty could lead to higher cost shipping services for Australian exporters and importers through, for instance, raising the regulatory risk premium attached to investing in assets to service Australian trades. According to Liner Shipping Services, shipping lines have invested approximately $1.5 billion in containers and other facilities to service Australian trades since 1993 (sub. 10, p. 30). If authorisation resulted in the risk premium attached to this investment rising by 1 per cent, and these costs are passed on by carriers, the net cost to Australian shippers could be upwards of $15 million per annum in extra freight costs.[23]

Concern about regulatory uncertainty appears to stem from several key features of the authorisation provisions which were noted earlier, namely:

- uncertainty of process, criteria, rules and thresholds that the ACCC and Tribunal might apply in assessing applications for authorisation;
- the emphasis on case-by-case assessment, creating concern that different conclusions may be reached in respect of similar applications;
- scope for the ACCC (subject to review by the Tribunal) to impose conditions on authorisation or seek undertakings from applicants; and
- the facility for review, and possibly revocation, of an authorisation where there has been a 'material' change in circumstances.

Of course, these procedures apply to most other Australian industries which seek authorisation of their conduct. Moreover, the process of authorisation ultimately is designed to promote the public interest. However, international liner shipping conferences are regulated at present under Part X (which also is designed to promote the national interest) and, moreover, given similar block immunity by all major trading economies. In these circumstances, effectively adding to the costs of conference operators (whose assets are highly mobile) may lead to reduced service levels on Australian trades.

That said, some regulatory uncertainty for shipping lines and shippers already exists because of the *ad hoc* reviews of Part X as a whole. Some regulatory uncertainty

[23] To put this figure into perspective, the Department of Transport and Regional Services estimated that Australia's annual freight bill for liner services is around $3.5 billion (sub. 3, p. 6).

(albeit limited) also stems from the regulatory discretion afforded by Part X (that is, by the Ministerial powers and complaints processes).

But, on balance, it is likely that moving to authorisation would increase the level of regulatory uncertainty for shipping companies, and hence, for Australian shippers. Increased regulatory uncertainty for carriers may stem from the transition from Part X to a regime based on authorisation.[24] There also is a risk that authorisation of some beneficial conference arrangements will be refused inadvertently or extra conditions imposed on an authorisation which add to the carrier obligations currently required under Part X, but which do not provide sufficient offsetting benefits to Australian shippers.

Uncertainty for carriers may also arise from the ability of the ACCC to initiate a review of, and possibly revoke, authorised arrangements. Under Part X this form of uncertainty currently exists only if conferences do not adhere to their obligations under Part X. Under authorisation, the powers now held by the Minister under Part X would be held by the ACCC. However, the ACCC would have a much wider power to overturn an authorisation or part of it than the Minister currently has, and this would increase uncertainty for shippers and shipping lines.

It is difficult to make a robust assessment of the extent of added uncertainty for carriers, and ultimately shippers, under Part VII in the absence of information on how the ACCC would view liner shipping arrangements submitted for authorisation. Nevertheless, the TPC (1993b, p. 23) has outlined a possible procedure for accommodating the industry's desire for minimal uncertainty under a transition to authorisation, including:

- granting an interim authorisation for the arrangements as they stand for a transitional period of five years;[25]
- new agreements would be submitted for scrutiny during this transitional period (earlier authorised agreements would stand in the interim);
- introducing a fixed time limit for assessing authorisations (a 45-day period was suggested); and
- existing agreements would continue to stand in the event of an appeal concerning ACCC decisions relating to new agreements.

24 Increased regulatory uncertainty associated with a transition to authorised arrangements is a concern only if companies decide to defer investments (for example, in new, larger and more fuel-efficient ships) until they gain sufficient experience with new regulatory arrangements. In these circumstances, deferral of investment may lead to the deferral of shipper benefits.

25 This option was also suggested by the National Farmers' Federation (sub. 21, p. 5).

Another important step could be for the ACCC to issue guidelines relating to how it might assess liner shipping arrangements.[26]

The initiatives proposed by the ACCC plus the issuing of guidelines could postpone and potentially mitigate the uncertainty associated with abolition of Part X.

International compatibility and countervailing power

As discussed in chapter 6, an important criterion by which any alternative to Part X should be judged is the degree of compatibility with the regulatory regimes of Australia's major trading partners. Moreover, attempts to regulate conference activities must recognise the limits of Australia's market power.

There seems to be no plausible reason why an authorised conference agreement, which is identical to those currently in place, would be incompatible with overseas regimes.

The issue of the extraterritorial application of Australia's anti-competitive conduct laws (Part IV of the TPA) could arise if authorisations are not granted but conferences continue to form and operate offshore. If the ACCC and Tribunal decided not to authorise some or all conferences it is possible (but perhaps unlikely) that conferences would disband and former members would act independently, in which case the application of Part IV would not be triggered. Therefore, a major concern with the 'authorisation option' seems to be what would happen if an application were rejected by the ACCC but clandestine collusive agreements persisted, based offshore (and indeed, were legal in some jurisdictions).

Many participants argued that if a conference were formed without the protection of Part X or an authorisation, the ACCC would face significant difficulties in gathering the evidence required for a prosecution under Part IV. In discussions, several shippers argued that without Part X carriers would enter into conference arrangements offshore, making it more difficult for the ACCC to detect them and gather information. They also considered that Australia would lose the ability to impose obligations on conferences (such as the requirement to negotiate minimum service levels) — in exchange for limited exemptions.

There are no legal constraints preventing legal action against an outward-bound shipping conference that was alleged to have breached Part IV of the TPA. However, several practical impediments make such action against conferences less

[26] The ACCC has issued guidelines covering a number of its other responsibilities under the TPA, such as those covering how it intends to administer the access undertakings and merger provisions.

likely. For a start, there may be legal complications if the conduct being complained of is legal in the country at the other end of the trade. Furthermore, the ACCC and the courts may face some extra difficulties (above those prevailing in relation to locally-based firms) in gathering all relevant information, especially if shipping companies are not required to maintain an office in Australia (which they are required to do under Part X). Also, there is the risk that, in the event of a successful prosecution under Part IV, shipping companies may decide to withdraw from Australian trades rather than pay fines or comply with other court orders. This possibility arises because of the potential magnitude of remedies available under Part VI (fines of up to $10 million for companies and $0.5 million for individuals, per offence). The possibility that conferences would disband rather than comply with orders for compensation or to meet other obligations was canvassed in an earlier Trade Practices Commission (TPC) investigation of a complaint by the Australian Peak Shippers' Association (APSA).[27]

Legal advice provided to the Brazil Review in relation to the application of section 46 (prohibiting misuse of market power) to shipping conferences concluded that Australia would in principle be able to take action against conferences that were found to have engaged in prohibited conduct (Brazil *et al* 1993, appendix D). However, the advice also noted the practical difficulties of gathering the information necessary to prove a case of this type. These difficulties may be compounded by the potential inability of the ACCC to issue notices to foreign carriers under the TPA (section 155) requiring them to furnish documents relevant to the conduct of a prosecution.[28]

The Law Council of Australia (sub. 19, p. 6) suggested several amendments to the TPA designed to overcome the practical difficulties in mounting an action against a conference under Part IV. The Council recommended that if Part X were abolished, provisions similar to division 12 of Part X (which provides for the registration in Australia of ocean carriers' agents) be retained in the TPA. It argued that requiring shipping lines to maintain a registered office in Australia would provide for more effective enforcement of the TPA as well as facilitating the gathering of information relating to potential breaches of the TPA (using section 155 of the TPA).

The Council also stated that although sections 5 and 6 of the TPA (which deal with the extraterritorial application of the TPA) would apply if Part X were repealed, this situation could be clarified, by amending section 5 to provide that for the purposes

27 During the investigation, members of NACON informed the TPC that in the event of a demand to pay monetary compensation they would choose to disband the conference rather than pay (TPC 1993a, p. 89).

28 Section 10.91 of the TPA gives the ACCC power to obtain information, documents and evidence for investigations under Part X.

of section 5(1), an ocean carrier which supplies shipping services to or from Australia shall be taken to be a body corporate carrying on business in Australia in relation to the supply of those shipping services.

The Law Council of Australia argued that:

> An amendment along these lines should, in our view, suffice to bring the relevant parties within the jurisdiction, without Australia being able to be criticised for claiming extra-territorial jurisdiction [and that this proposal] is not intended to extend the territorial reach of the TPA beyond its present limits. (sub. 19, p. 6)

On balance, the Commission is concerned that the likely effect of the latter amendment would indeed risk laying Australia open to the criticism which the Law Council of Australia explicitly seeks to avoid. The proposed amendments to the TPA also raise a much broader issue of how Australia should best respond to potential instances of anti-competitive conduct by foreign firms engaged in trade with Australian companies. This broader issue is beyond the scope of this review.

Administrative and compliance costs

Ideally, any regulatory regime should seek to minimise administration and compliance costs, including the cost of delays. Under authorisation, administrative and compliance costs will include the costs to the parties involved in the authorisation process (mainly shippers and carriers) as well as the cost to the ACCC of reviewing applications. The costs to carriers are only relevant to the extent that their incidence may fall on Australian shippers.

Some participants considered that the authorisation process would cause undue delays and be costly to administer.[29]

In respect of delays, the Brazil Review (Brazil *et al* 1993, p. 112) stated that registration of conference agreements took two months on average (between lodging an application with the Registrar of Liner Shipping, and the ability of conference members to operate under the exemptions available). According to the ACCC, the process of assessing an authorisation can take an average of ten months (this is the time between lodging an application and a final determination by the ACCC) (ACCC, pers. comm., 5 May 1999). However, the duration depends on the complexity of the case. Some straightforward applications have been finalised in two to three months, whereas in more complex cases (such as those dealing with arrangements in the electricity industry), the process has taken longer than average.

29 These concerns were expressed by the Department of Transport and Regional Services (sub. 3), Liner Shipping Services (sub. 10), APSA (sub. 11) and the Government of South Australia (sub. 12).

Tribunal reviews of ACCC determinations may take around 12 months (being for the time between lodging and ruling on an appeal). Again, the duration of the review process will be affected by the complexity of the issues.

In discussions, the ACCC also argued that once some experience in assessing liner shipping arrangements is gained, the process could be streamlined considerably. Indeed, as noted above, the ACCC has suggested that time limits (45 days) could be placed on consideration of conference agreements.

Turning to administrative costs, the fees for registration of agreements (and variations to agreements) under Part X amount to $570. The revenue collected by the Registrar from fees between 1989 and 1999 was $156 475, at an average of around $15 650 per annum. (sub. DR29, p. 6) To this amount must be added the costs incurred by the Registrar over and above those met by application fees. As noted in chapter 6, DTRS stated that the functions of the Registrar requires about 20 per cent of one staff year and that of an 'authorised officer' a further five per cent of one staff year. (sub. DR29, p. 4).

Administrative and compliance costs are likely to be significantly greater under Part VII by virtue of the need for a case-by-case assessment of conference agreements. The major additional costs would be the costs to the ACCC and possibly the Tribunal of reviewing applications for authorisation. Costs also include those incurred by interested parties in making submissions to ACCC reviews and the costs arising from possible appeals to the Competition Tribunal. On-going monitoring by the ACCC may also be required to determine whether there are grounds for revoking or varying authorisations.

Application fees under Part VII are currently $7500 per application. Where a group of similar authorisations is submitted, the fee per subsequent application is $2500.[30] These fees are likely to be well below the costs to the ACCC of examining applications. As an indication, the ACCC's adjudication budget is around $1.8 million per annum enabling it to examine around 40 authorisations per year (ACCC, pers. comm., 5 May 1999), giving an average resource cost of around $45 000 per authorisation.[31]

30 To attract the concessional application fee the conduct covered by additional applications must occur in the same or a closely related market to that involved in the original application and lodgment must be made within 14 days of the original lodgment (ACCC 1995a, p. 27).

31 This is a minimum figure because staff from other areas of the ACCC are often brought in to adjudication teams reviewing authorisations. The estimated adjudication budget does not cover the cost of seconded staff (ACCC, pers. comm., 5 May 1999).

The magnitude of administrative costs associated with authorising shipping industry arrangements in practice will depend on the nature of the agreement(s) submitted for authorisation and the thresholds for review by the ACCC. As discussed above, the Commission considers that it is likely that the ACCC would require individual liner shipping agreements to be submitted for authorisation by conferences.

The major administrative and compliance costs are likely to stem from participating in the authorisation process. This includes the costs of:

- preparing applications, which may include legal fees;
- preparing additional submissions to the ACCC (for example responding to an interim decision or to submissions by other interested parties);
- appearing at a conference to consider an ACCC interim decision;
- initiating (or appearing as a party to) an appeal to the Tribunal against an ACCC decision; and
- complying with notification requirements or enforceable undertakings (for example, to inform the ACCC of changes in conference membership).

It is not possible to determine *a priori*, the likely magnitude of these costs for shippers, shipping lines, the ACCC and other interested parties. However, it is likely that administrative costs to government and to carriers would be significantly greater under Part VII than under Part X. As noted earlier, adding to the cost of internationally mobile conference carriers may lead to reduced service levels on Australian trades, to the detriment of Australian shippers.

Other considerations

Chapter 3 set out the criteria to be used to assess various regulatory options. Authorisation has been assessed against some of these criteria — such as transparency, predictability, international compatibility, and administrative and compliance costs — in the previous discussion.

This section briefly assesses Part VII authorisation processes against the remaining criteria — the objectives of minimal regulation and promotion of commercial outcomes, recognition of the limits of Australia's market power, and flexibility. Further observations are made in respect of criteria such as transparency, compliance and consistency with arrangements applying to other industries.

Minimal regulation and promoting commercial outcomes

Part X is a comparatively permissive regulatory regime which allows organisational structures to evolve in liner shipping, subject to competitive market pressures. Arguably, a presumption underlying Part X is that the competitive characteristics of liner shipping markets, combined with the countervailing power of shippers, normally are sufficient to constrain the misuse of market power of conferences and other cooperative arrangements. Authorisation takes a significantly different approach by virtue of the presumption of public detriment due to any collusive behaviour and hence the requirement for a case-by-case approach to assessing conference and cooperative arrangements.

The extent of competition in liner shipping markets (on particular trades or more generally) would be a key factor in any decisions taken by the ACCC as part of their case-by-case reviews under authorisation.

Subject to the substantial concerns, specific to this industry, about the authorisation process discussed in this chapter, the ultimate outcomes for shippers under authorisation, in principle, may not be inferior to those achieved under Part X, particularly if the ACCC and the Tribunal were to:

- define markets broadly in assessing competition in liner shipping, rather than looking at narrow segments only;
- take a relatively long time horizon; and
- take a view of the public interest which recognises the close correspondence between the public interest and shippers' commercial interests.

However, as far as the Commission is aware, the ACCC has not considered competition in liner shipping in detail previously. In attempting to understand how the ACCC may look at liner shipping arrangements, potential sources of guidance include the TPC's report on an investigation under Part X (see box 7.1) and other authorisation cases considered by the ACCC and Tribunal.

Another key difference between Part X and authorisation is that the latter gives a greater direct role to the regulator. Part X essentially allows shippers or the Minister to determine when action should be taken against a conference, though the Minister can also initiate an investigation by the ACCC. Under authorisation, the ACCC may choose to intervene directly. For example, potential outcomes for shippers under authorisation will be affected by the conditions imposed on authorisations or enforceable undertakings accepted by the ACCC. The purpose of conditions and undertakings may be to ensure that claimed conference benefits are realised and passed on to shippers. A potential benefit to shippers of this approach is that the conditions and undertakings strengthen shippers' negotiating position with respect

to conferences because of the ramifications of non-compliance (pecuniary penalties and revocation of the authorisation). On the other hand, such intervention must be targeted so as not to distort efficient market outcomes.

Box 7.1 TPC investigation of a complaint under Part X

In 1992, the Trade Practices Commission (now the ACCC) was asked to look into alleged breaches of Part X by conference lines on the Australia–United States trade.[a] In examining the complaint, the TPC looked at the state of competition in the Australia–United States trade, based on a number of factors, including:

- the volume and mix of trade with the United States;
- recent entry and exit from the trade;
- the number of companies operating in the trade and their capacity; and
- conference market share.

In this particular instance, the TPC defined the relevant markets narrowly. It focussed on competition among lines for the business of particular commodity groups (such as horticultural products, meat, dairy, wool and metals) arguing that competition can vary depending on the characteristics of the commodities being transported.[b]

NACON conference market shares, 1993

	Dairy	*Wool*	*Horticulture†*	*Metals*	*Meat*
NACON	77	24	100	8	60
Non-conference	28	76	0	92	40

† The apple and pear industry stated that it was restricted to using NACON services due to United States quarantine regulations which prevailed at the time.

Comparisons of the market shares derived under different assumptions about market boundaries highlight the importance of market definition to the analysis of competition in liner shipping markets. Competition in liner shipping markets was discussed in chapter 5 and information on market shares in liner shipping is summarised in chapter 2 (and appendix C).

[a] The matter related to the introduction of terminal handling charges by conference and non-conference lines for the movement of export containers through shipping terminals in the United States (TPC 1993a, p. 5). [b] The relevant markets could have been defined more broadly as, for example, the markets for transportation of dry or reefer cargoes on the Australia–United States trade (including transhipment), or as the market for liner services on the Australia–United States trade.

Source: TPC (1993a, pp. 37–50).

Flexibility

Regulatory outcomes also depend on the responsiveness of regulation to changing market conditions. In principle, moving to the authorisation process could permit changing market conditions to be incorporated in regulatory decision-making more rapidly than under Part X, leading to a more responsive regulatory environment for shippers and shipping lines.

A potential advantage of authorisation over Part X is that at the time a discussion agreement is submitted for authorisation, the ACCC would be able to determine whether the benefits of allowing that agreement would outweigh the costs, taking the prevailing circumstances into account.

However, as noted above, achieving improved outcomes for shippers depends on how the authorisation process is administered by the ACCC and the Tribunal. The complaints mechanism under Part X and periodic reviews of Part X both provide avenues for review of shippers' concerns about particular discussion agreements.

One area where authorisation may provide greater flexibility than Part X is in terms of the scope of exemptions. Under authorisation, scope exists for modifying the scope of exemptions where circumstances or terminology changes. On the other hand, as already noted, discretion to vary the scope of exemptions under an authorisation may provide added uncertainty for carriers and shippers.

Transparency

The authorisation process is more transparent than Part X in several respects. For instance, the ACCC is required to review authorisation applications in an open manner by inviting public submissions and comment. As noted in chapter 6, there is no requirement for the Registrar of Liner Shipping to invite public comment on conference agreements submitted for registration.[32]

Compliance

A further potential benefit of authorisation is that it may provide an added incentive for carriers to comply with their obligations to shippers. Breach of a condition attached to an authorisation could not only lead to revocation of the authorisation,[33]

32 However, the Registrar pointed out that copies of provisional agreements are sent to the ACCC thereby providing an opportunity for the ACCC to comment on whether the proposed agreement meets the criteria for registration (sub. DR29, p. 5).

33 See section 91B(3)(b) of the TPA.

but also, under section 87B of the TPA, if parties to an authorisation breach the terms of an undertaking, the ACCC may apply to the Federal Court for an order to:

- direct the parties to comply with an undertaking;
- pay the Commonwealth an amount up to the amount of any financial benefit resulting from the breach;
- compensate any other person who suffered loss or damage as a result of the breach; and
- any other order that the court considers appropriate.

Under Part X the only penalty available is full or partial deregistration of an agreement. Even if deregistration occurs, shipping companies could immediately lodge a new agreement incorporating minor changes (see chapter 6). It may be possible to amend the present arrangements to enable similar remedies to be sought with respect to non-compliance with Part X (see chapter 8), particularly in respect of undertakings given by carriers.

Regulatory consistency

A claimed benefit of repealing Part X, thereby exposing liner shipping arrangements to the general provisions of the TPA, is that it would achieve greater consistency with arrangements applying to other domestic industries. For instance, the Department of the Treasury stated that:

> Using the authorisation process [to regulate liner shipping] has several advantages … [one of which is that it] is the universal standard [in Australia] for assessing whether anti-competitive behaviour is appropriate.
>
> [Authorisation] would be consistent with … [the approach] which applies to other industries. (sub. DR 35, p. 25)
>
> While harmonisation of differing competition frameworks between countries is a desirable objective, the first concern is to seek liner shipping regulation which complies with the domestic competition framework. (sub. DR35, p. 19)

Removing Part X would force the liner shipping industry to comply with the regulatory requirements facing almost all Australian industries. The TPA contains special provisions for the telecommunications industry but these are intended to be transitional arrangements. Some other industries have special regulatory regimes, such as airports and postal services but these are embodied in separate Acts rather than in individual sections of the TPA.

The principal rationale for uniformity is that no industry receives 'special' advantages relative to other industries that could distort domestic resource

allocation. However, international liner shipping is a global rather than domestic industry, and Australia relies almost totally on foreign liner services (which do not use Australian resources). Indeed, for Australia, international liner shipping is not an industry in the normal sense of the word but an imported service.

Compared to the need for international consistency, achieving greater consistency between Australia's liner shipping regime and the arrangements applying to domestic industries is not the first concern as the Department of the Treasury submitted (above). The Commission's principal concerns are the efficiency of outcomes and the efficiency of regulation. Achieving international compatibility in liner shipping regulations is important for Australian shippers because it reduces the potential costs to carriers of entering Australian trades. Other countries have granted exemptions from their competition laws to liner shipping conferences without the need for case-by-case justifications. Imposing the requirement for a case-by-case justification on foreign shipping lines may impose additional costs on carriers and ultimately, Australian shippers.

7.3 Block authorisation

Under the existing authorisation process a case-by-case assessment of conference agreements would be required. An alternative proposal is to establish a new process under the TPA for granting block authorisation to a broad range of agreements in a particular industry. Such a scheme could work in a manner similar to that which exists in the European Union.

The European Union's rules on competition are embodied in the Treaty of Rome. Article 85, which prohibits a range of anti-competitive conduct, enables block exemptions from the prohibitions on anti-competitive conduct to be granted where proposed conduct can be shown to contribute 'to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the benefits'.[34]

As noted in chapter 4, the European Union has issued Regulation 4056/86 which grants a conditional block exemption to liner conferences operating on inward and outward trades. The exemption allows price fixing by conferences (amongst other things) but does not allow conduct which constitutes a misuse of market power. Under Regulation 4056/86, conferences need not notify their agreements to the European Commission (which is the body responsible for administering Europe's

34 See Article 85(3) of the Treaty of Rome.

competition laws). However, they may seek confirmation from the Commission that they comply (see chapter 4 and appendix F).

The option of establishing a similar procedure under the TPA raises a variety of issues that go beyond this current inquiry. For instance, creating such a process would be a significant departure from the authorisation process and may have implications for a large number of industries, other than the liner shipping sector.

To avoid creating implications for other industries, application of a block exemption process could be limited to the international liner shipping industry. However, arrangements for regulating liner shipping under the block exemption process could also be achieved under Part X and would retain the characteristic of being an industry-specific regime — which is a key argument advanced by some participants for abolishing Part X.

There are some concerns about the potential magnitude of regulatory costs under a block exemption process. For instance, the Department of Transport and Regional Services commented that:

> It appears that Part X involves less regulatory intervention than the European Union system [and that] the [block exemption] system … appears to have involved a relatively high level of intervention by the Competition Directorate (DGIV) to deal with disputes and alleged breaches of Regulation 4056/86. (sub. DR29, p. 3)

Concerns about the regulatory costs associated with the European block exemption process appear to stem from the protracted dispute between the European Commission (which administers the block exemption) and conference carriers, which centres on whether the exemption for liner shipping conferences covers inland price fixing.[35] According to Gardner (1997, p. 320) the European Commission is attempting to interpret the European Union's competition rules in a way that limits the scope of the exemption for liner shipping. The European experience underscores the point that regulatory costs will depend on how any liner shipping exemption is interpreted and applied.

7.4 Industry codes

An alternative to Part X involves conferences and peak shipper bodies agreeing on an industry code of practices. Such a code could identify permissible conference

[35] The European Commission has sought to address six aspects of the group exemption in recent decisions, covering: inland price fixing, the meaning of 'uniform or common' freight rates, capacity management, service contracts and freight forwarder compensation (Wood 1999, pp. 17–22).

arrangements modelled on Part X, as well as an independent dispute resolution process and provisions for enforcement (ACCC sub. 16, p. 14).

As noted above, it is highly likely than any code agreed between shippers and carriers would require authorisation in which case the discussion in section 7.2 is relevant. However, whereas the discussion on authorisation canvassed the development of an industry code in the context of what an authorisation might need to look like, it did not consider explicitly whether the ACCC would be likely to authorise a code resembling Part X.

As noted above, the Department of the Treasury suggested that industry could agree on an industry code which encompasses the 'core restrictive practices' to be adhered to by conferences (sub. DR35, p. 24).[36] Concerning the prospects for developing a liner shipping code, the Department of the Treasury also says:

> Such an approach would be consistent with that which applies to other industries and would be transparent. Codes of conduct and collective agreements have been authorised in the past and can be authorised where the benefit of the conduct to the public outweighs the anti-competitive detriment.

The ACCC has not authorised any industry codes resembling Part X. In written advice provided to the Commission on a draft of the Position Paper, Frances Hanks (senior lecturer in law at the University of Melbourne) said that:

> There is nothing in the history of authorisations under the TPA to suggest that an industry code outlining *types* of allowable conduct of the kind set out [in conference agreements] (price fixing, revenue pooling, vessel sharing) would have a chance of authorisation.
>
> Once the collective agreements are subdivided into specific trades, or specific conference arrangements, they look more like something that could be authorised. However, [the authorisation provision] requires that the anti-competitive detriment and public benefit of each part be established separately. (pers. comm., 15 June 1999)

In addition, Miller's Annotated Guide to the TPA lists examples of industry codes of conduct that have been submitted to the TPC/ACCC for authorisation in the past (Miller 1999, p. 552–553). Miller states that the ACCC has recognised that self-regulation schemes can play a part in promoting competition and efficiency. However, the cases listed in Miller do not seem to cover the same 'core conference practices' as the Commission understands them. Instead codes authorised or considered by the TPC/ACCC cover a narrower range of practices such as professional accreditation, ethics, advertising, safety and quality control.

36 The Department of the Treasury submission does not define a 'core restrictive practice'.

Miller's list of codes considered by the TPC/ACCC may not be exhaustive. One arrangement that is not listed but which has received considerable attention elsewhere is the National Electricity Code (NEC) (see box 7.2).

It is difficult to assess *ex ante* how the ACCC would be likely to view an industry code resembling Part X if it were to be submitted for authorisation. The available evidence suggests that the ACCC has not previously examined any industry codes for other industries which permit practices similar to those undertaken by liner shipping conferences. That said, the lack of any prior experience is not proof that any code for liner shipping that was developed could not be authorised. However, it is suggestive that practical difficulties may arise in designing an industry code for liner shipping that would have significant prospects of being authorised.

Box 7.2 **National Electricity Code**

The NEC provides the institutional arrangements governing the National Electricity Market (NEM). It comprises two distinct but inter-related elements:

- the wholesale electricity market arrangements; and
- the arrangements for access to the transmission and distribution system.

The market arrangements govern the operation of the wholesale spot market and include the institutional arrangements, system security requirements, the market rules for bids, offers and dispatch and metering standards. The access arrangements are the technical rules governing connection to and use of the physical wires infrastructure for transporting electricity.

The NEC is a complex document that encompasses a range of practices that could affect competition in the NEM. Amongst other things, the NEC submitted for authorisation stipulated that a ceiling and floor would be set on wholesale electricity prices. The ACCC expressed concerns about the potential effects of these price restrictions and in particular, sought to have the price floor removed from the code.

Source: ACCC (1998).

7.5 Notification

Another alternative to Part X, raised in discussion with participants and in submissions, was introduction of a modified form of notification process.

Currently, notification is only available for exclusive dealing (section 47), including third-line forcing. Section 93 of the TPA allows persons to notify the ACCC of conduct that may breach the exclusive dealing provisions of the TPA. Notification provides immunity from prosecution, unless the ACCC decides to review and

revoke a notification. Unlike the authorisation process, a greater onus is placed on the ACCC to overturn a notification by showing that the public benefit of the notified conduct is less than the public detriment.[37]

Due to the limited application of the current regime, establishing a notification process that could accommodate arrangements in the liner shipping industry would involve creating a notification process that is specific to the liner shipping industry.

The broad features of such a scheme were outlined by the ACCC (see box 7.3).

Box 7.3 **Modified notification process for the liner shipping industry**

This model provides for a new notification procedure that would encompass many of the provisions covered by Part X and apply to the liner shipping industry only. The process was outlined by the ACCC as a possible transitional arrangement. Key features of the proposed procedure include:

- Parties to a conference would be required to notify agreements to the ACCC in order to receive an exemption;
- Exemptions would extend to all matters covered by Part X, including price fixing;
- Shippers intending to engage in coordinated negotiations with shipping lines would be required to notify such arrangements;
- Notification of conference agreements would be conditional on certain minimum criteria being met. For instance, it would need to specify minimum services levels and outline a carrier/shipper agreed mechanism for resolving commercial disputes;
- the notification would need to include enforceable undertakings concerning matters such as providing advance notice of changes to shipping arrangements, negotiating with a notified shipper body whenever reasonably requested and adherence to a carrier/shipper agreed dispute resolution process;
- the ACCC would be able to review a notification if evidence arose of substantial anti-competitive effects of an agreement (two options are to allow reviews to be commenced without a complaint from shippers or, alternatively, to allow a review only in the event of a shipper lodging a formal complaint);
- notification of agreements could be revoked where the ACCC was satisfied that the costs of the notified conduct outweigh the benefits; and
- ACCC review decisions would be appealable to the Tribunal.

Source: ACCC (sub. 16, pp. 11–14).

37 However, in practice the onus of proof under notification may lie with the parties seeking exemptions. This is due to the administrative nature of the notification process. In reviewing a notification, the ACCC is likely to require parties to the notification to submit information that will satisfy it that the conduct delivers net benefits.

The modified notification process would work in a similar way to the current Part X. However, under the proposed notification arrangement:

- disputes relating to specific carrier obligations, such as the requirement to negotiate whenever reasonably requested to do so, would be handled via an agreed commercial dispute resolution mechanism, with involvement of the ACCC as a last resort;
- the ACCC may be able to investigate carrier practices without receiving a formal complaint where evidence of substantial anti-competitive effects arises;
- remedial action could be taken through the Federal Court where specific carrier obligations were violated and carriers/shippers could not resolve the issues through negotiation; and
- ACCC review decisions would be appealable to the Tribunal.

In principle, the modified notification regime has several attractive features.

Arguably, Part X explicitly assumes that conference arrangements are desirable from an efficiency viewpoint (or that they will exist even if banned by Australian law) and therefore grants a block exemption subject to certain safeguards. Under authorisation, this presumption would be reversed because a case-by-case assessment of conferences would be required. Authorisation places the onus on the applicant to prove that the public benefits of the proposed conduct outweigh the costs. However, under the proposed notification process, notified conference agreements would be protected from Part IV unless the ACCC was satisfied, after a review, that the public benefits were less than the costs of the notified conduct.

Permitting the ACCC to disallow a notification may reduce compliance and enforcement costs (because only those agreements that are possibly detrimental will be reviewed). As noted by the ACCC, notification is a less formal process than authorisation. Notification is also cheaper, costing between $100 and $2500 per application (the lower end of the fee scale is applicable to small business and to proprietary limited companies) (sub. 16, p. 11).

However, there are several arguments against the notification approach. Most obviously, the proposed notification process would still constitute a specific regime for the liner shipping industry — which is the main ground on which some participants criticise Part X. As the Commission has argued throughout this report, it is the efficiency of the process that is most important, not the form or symmetry of the legislation. More importantly, there is considerable uncertainty as to how frequently and on what basis, the ACCC would decide to examine a notified arrangement. At one extreme, it could operate like Part X (reviewing anomalies in response to shipper complaints only). Alternatively, the notification regime could be

administered in a manner akin to authorisation, with the ACCC reviewing every notified agreement (or variation to an existing agreement) in detail.

If the ACCC were to administer a notification regime for liner shipping in a manner akin to the authorisation provisions then the discussion relating to authorisation in this chapter is relevant. If the notification regime were to be administered in the same way as Part X, it would call into question the logic of incurring the transitional costs of moving to notification.

7.6 Conclusion

The major alternative to Part X is application of the general provisions of the TPA. This would allow carriers and shippers to apply to the ACCC for authorisation of conference and shipper body arrangements, respectively.

The process of granting exemptions for conference arrangements would be significantly different under authorisation. Under Part X, exemptions for conference agreements are granted automatically, providing certain requirements as to form and content are met. 'Public interest' examinations of conference arrangements can be initiated by shippers or the Minister only. Under the authorisation procedure, carriers would be required, *ex ante*, to convince the ACCC, and possibly the Tribunal, that the benefits to shippers of conference arrangements would outweigh any costs (anti-competitive detriment). The ACCC would also be able to initiate a review of an authorisation, prior to its expiry, if it found that circumstances have changed 'materially'.

In principle, authorisation could achieve similar outcomes to those attained under Part X as a wide range of liner shipping conduct, including price fixing, can be authorised under the TPA. A key concern for shippers is retaining the countervailing powers they have under Part X. If Part X were repealed, this could be achieved by the ACCC authorising agreements subject to conditions or undertakings (dealing with safeguards such as the requirement on conferences to negotiate minimum service levels with APSA, and to provide advance notice to shippers of proposed changes in price and service levels).

There is some uncertainty about the Government's ability to enforce Australia's competition laws, in relation to the conduct of foreign carriers, in the absence of Part X and in the absence of an authorisation being granted. Compared to a situation where locally-based companies are trading in Australia, the Government may face extra difficulties such as gathering information from companies located overseas, and forcing foreign carriers to pay pecuniary penalties or comply with other remedies.

Authorisation has some potential advantages over Part X. Under authorisation, carriers would face a broader range of significant penalties for failing to comply with their obligations to shippers than under Part X as it stands at present. Also, compared to Part X, the authorisation process is potentially more flexible and transparent.

However, the authorisation process, by its nature, inevitably increases scope for third-party intervention and creates uncertainty about outcomes. It is feasible that the authorisation process could function in a similar manner to Part X — that is, allow conferences to operate comparatively freely, albeit subject to certain requirements to negotiate with shippers coupled with sanctions against abuse of market power. Indeed, the Commission is of the view that, were Part X to be repealed, application of Part VII *eventually* would see a Part X-type regime (that is, conditional block exemption) re-emerging. However, the process of implementing Part VII could be protracted and costly, and probably would require legislative amendment to allow block authorisation. Indeed, the industry-code approach of Part X appears antithetical to the approach of Part VII as it currently stands and as it has been practiced.

A second major option examined was the possibility of establishing a procedure under the TPA for granting a block authorisation. The European Union's block exemption process is a potential model. However, implementing such an option may have broad ranging implications for many sectors of the economy, or, if its application were to be limited to liner shipping only, would still constitute a 'special' industry-specific arrangement.

An approach that involved developing an industry code similar to Part X could potentially minimise compliance and regulatory costs. However, there are some concerns about whether an industry code resembling Part X could be accommodated under Part VII. It is also unclear whether there would be sufficient gains to offset the transitional costs arising from any shift to an industry code resembling Part X.

A further alternative involved notification of agreements to the ACCC. To accommodate the types of arrangements prevalent in liner shipping, the TPA would need to be amended to extend the scope of the current notification arrangements (which apply to exclusive dealing conduct only). A shipping industry notification regime could operate in practice in a similar way to either authorisation or Part X and this would add an extra layer of uncertainty for the participants in such a process. The notification regime would still constitute a 'special' arrangement specific to liner shipping.

8 Modifications to Part X

The terms of reference require the Commission to examine possible improvements to Part X. A number of potential modifications to Part X, drawing on submissions from participants and the discussion in previous chapters, are examined here.

Possible modifications to Part X examined in this chapter relate to two broad areas: coverage and content; and administrative processes. Matters relating to the coverage and content of Part X include:

- terminal handling charges (THCs);
- intermodal charges;
- safeguards for importers;
- regulation of discussion agreements;
- open *versus* closed conferences;
- declaration of a carrier with substantial market power;
- discrimination between shippers; and
- Australian flag shipping.

Proposed modifications to Part X processes include:

- penalties and dispute settlement;
- variations to the registration process;
- funding for the Australian Peak Shippers' Association (APSA); and
- a separate shipping Act.

8.1 Terminal handling charges

Several questions relating to the setting of terminal and port charges have been raised with the Commission. First, whether the Part X exemptions relating to collective rate setting currently extend, and/or whether it is in the national interest to extend them, to terminal-to-terminal charges. Second, if such exemptions are considered to be in the national interest, whether or not they should extend to container-handling facilities outside the ports. Third, whether or not the Part X

exemptions extend to the collective negotiation of stevedoring contracts by conferences. Fourth, whether it is desirable that terminal handling charges be itemised separately in the freight bill.

The first issue is whether or not the Part X exemptions relating to collective rate setting currently extend to terminal-to-terminal charges. The shipping service contracted between shipper and carrier normally includes sea transport (the 'blue water' component) as well as the loading and unloading of containers and their sorting and stacking within the terminal. The charges for these services are referred to collectively as terminal-to-terminal rates.

Whilst Part X clearly allows conferences to set blue water rates, the legal status of terminal-to-terminal charges appears uncertain. Whilst section 10.14 (1) notes that the exemptions apply solely to the transport of cargo by sea and activities that take place outside Australia, section 10.14 (2) notes that:

> The exemptions provided by this Subdivision extend to:
>
> (a) the fixing of door-to-door freight rates for an outwards liner cargo shipping service, if freight rates are also fixed for shippers wishing to use only those parts of the service that consist of:
>
> (i) the transport of cargo by sea;
>
> (ii) activities that take place in Australia within the limits of a wharf appointed under section 15 of the Customs Act 1901 … and
>
> (iii) activities that take place outside Australia at a wharf or adjacent terminal facilities …

Clearly section 14.2 allows conferences to set door-to-door rates providing shippers are given the option of a rate covering 'the transport of cargo by sea' as well as activities taking place 'within the limits of a wharf'. There appears to be uncertainty as to whether (i) and (ii) may be interpreted as terminal-to-terminal transport, and if so, whether terminal-to-terminal rates are allowable other than as a component of door-to-door rates.

Whilst Steinwall and Layton (1997, p. 363) assert that the exemptions granted by sections 10.14 and 10.22 do not apply to stevedoring (terminal) operations or the transport of cargo by land or air within Australia, the ACCC has argued that their precise scope is unclear (see LSS, sub. 10, p. 33).

Several submissions argued that there is a case for clarifying and/or extending existing exemptions relating to conference charges for stevedoring (terminal) services. Liner Shipping Services argued that carriers should be permitted to:

> … collectively set all charges, [or at least those] involved in the terminal gate-to-terminal gate as part of a door-to-door movement, including the collective setting of

> Port Service Charges and Terminal Handling Charges … this approach would be fully consistent with that taken in Europe and in North America in that the basic exemption at least covers terminal-to-terminal movements. (sub. 10, pp. 33–34)

The discussion raises the issue of whether or not it is in the national interest that Part X exemptions relating to collective rate setting cover terminal-to-terminal charges. It is common practice for shipping lines to quote freight rates on a terminal-to-terminal rather than a blue water basis. Furthermore, slot chartering arrangements within consortia and/or conferences, which are considered desirable in that they enable carriers to operate larger vessels than might otherwise be employed, imply that vessels usually carry containers consigned on account of a number of carriers. Given such slot chartering arrangements, there would be practical difficulties in separating out and assigning stevedoring charges were consortia or conferences refused permission to charge a common stevedoring fee.

Given doubts regarding the precise scope of Part X exemptions relating to collective rate setting, especially with regard to terminal-to-terminal charges, and the arguments favouring collective rate setting on a terminal-to-terminal basis, the Commission recommends that the relevant sections of Part X be redrafted (see recommendation 8.1A below).

Second, the extension of Part X exemptions relating to collective rate setting to container terminals outside the confines of a port (that is, outside the limits of the wharf as defined under section 15 of the *Customs Act 1901*) is more problematic.

The Department of Transport and Regional Services argued that:

> … consideration should be given to … extending Part X exemptions to container depots not within the limits of a wharf so as to be consistent with the principle of facilitating intermodal transport and door-to-door services. (sub. 3, p. 27)

The Commission notes that plans exist for the development of inland container depots in Sydney's western suburbs. Such projects, which aim to boost the handling capacity of the port by minimising wharf congestion, raise questions concerning the extension of Part X exemptions to facilities outside the limits of the wharf as defined under section 15 of the *Customs Act 1901*. On the one hand, it could be argued that such container terminals are merely an extension of those within the port limits, made necessary by congestion within the port area. On the other hand, were such exemptions granted to container terminals located within the metropolitan area, it might be argued that they should be extended to existing and proposed container depots located throughout country New South Wales. Such a recommendation would by default allow conferences to continue to quote door-to-door rates (see discussion below on intermodal rates). On balance the Commission

considers that the word terminals should be taken to include terminals within the metropolitan area of port cities.

The third issue is whether or not the Part X exemptions extend to the collective negotiation of stevedoring contracts by conferences. The Department of Transport and Regional Services noted that collective negotiation of stevedoring contracts has been the customary practice:

> While some doubt has been expressed as to whether sections 10.14 and 10.22 provide an exemption for conferences to negotiate as a 'block' with stevedoring companies, this has been the practice for many years. Accordingly, any changes to the Part X regime should clarify whether or not conferences should be allowed to negotiate as a 'block' with stevedoring companies in Australia. (sub. 3, p. 26)

The Department presented arguments for and against such an exemption:

> Some suggestions have been made that the Part X exemptions, through allowing shipping companies to collude as cartels, has reduced their incentive to put pressure on stevedoring companies to reduce costs and improve efficiency.
>
> The Brazil report (p. 151) contains an alternative view to the effect that conferences/consortia can obtain a lower charge per TEU because of the large volume of cargo they can offer, and also the fact that conferences/consortia generally present efficient ships with a reputation for cargo stowage expertise. (DTRS, sub. 3, p. 26)

Whilst the Commission has not been presented with evidence that demonstrates beyond reasonable doubt that conferences obtain lower stevedoring prices as a result of collective negotiation, it accepts that in a world in which slot chartering is common it would be inefficient to require lines to negotiate individually with a stevedore.

Fourth, APSA has questioned the desirability of separately itemising THCs in the freight bill. The Commission understands that it was common until the mid-1980s to subsume THCs into the basic freight rate. However, declining freight revenue and increased stevedoring costs led carriers to seek to separate out 'third party' charges, notably THCs and port service charges (PSCs).

Liner Shipping Services argued that there are clear benefits in separately identifying and making transparent terminal handling and port service charges, notably the pressures that can be exerted on poorly performing enterprises, and that this benefit could be lost if conferences were unable to collectively set such charges (LSS, sub. 10, p. 34). For these reasons, some shippers support itemisation of charges.

However, in discussions with the Commission some shippers argued that, whilst transparency may yield some benefits, the application and joint determination of

THCs and PSCs were designed to put a floor under freight revenue, particularly in those trades that have experienced the largest price falls.

It is difficult to understand how the itemisation of cost components of itself can lead to overall rate increases. If shippers prefer to be quoted a single price for a complete service, this properly should be the subject of negotiation between themselves and the carriers rather than required under Part X. The Commission does not believe it desirable for the outcome to be determined by regulation.

RECOMMENDATION 8.1A

The Commission recommends that Part X be amended to clarify that the exemption relating to rate setting extends to land-based charges that normally form part of a 'terminal-to-terminal' shipping contract (that is, one that includes not only the 'blue water' component but also the sorting and stacking of containers within a container terminal). The Commission favours widening the definition of terminal from the present 'within the limits of the wharf as under the Customs Act 1901' to include terminals located within the metropolitan area of port cities.

RECOMMENDATION 8.1B

The Commission further recommends that members of shipping conferences should be able to collectively negotiate a conference rate with stevedores.

FINDING 8.1

The Commission considers that the issue of whether or not terminal handling charges should be itemised separately in the freight charge is a matter for negotiation between shippers and carriers rather one to be determined within the ambit of Part X.

8.2 Intermodal or 'door-to-door' rates

Globalisation of business and the advent of 'just-in-time' inventory management has increased shipper preference for intermodal or door-to-door transport services, although evidence given to the Commission suggests that this trend has been less marked in Australia than in the United States or Europe. While a single transport provider usually coordinates the intermodal service (so that the shipper has a single point of contact and receives a single bill of lading), the physical transport service

may be provided by several land and sea carriers.[1] Liner shipping operators have responded to shipper preferences by offering shippers a range of transport options, including door-to-door and terminal-to-terminal (blue water plus terminal handling) services.[2]

The key issue for the Commission is whether shipping conferences should be allowed to quote door-to-door rates. Under the existing Part X regime, outward and inward conferences are allowed to set door-to-door or intermodal rates providing they offer shippers the option of a rate that excludes the pre- or post-terminal land-based component. This exemption applies solely to the setting of door-to-door prices. As interpreted by the Department of Transport and Regional Services, and accepted by the industry, the exemption is taken to mean that conference members may not collude when negotiating with land transport providers. The Commission stresses that the right of individual shipping lines to quote door-to-door rates is not in question. The issue relates solely to the desirability of conferences being able to quote door-to-door rates.

Some participants expressed their preference for intermodal services and/or their support for the present Part X arrangements. For example, Interlaine stated:

> … many mills are located at some considerable distance from the nearest ports of arrival. It is therefore essential that efficient on-carriage arrangements exist to enable the wool to reach its final destinations without delay, and at a competitive price. (sub. 2, p. 1)

Interlaine clearly favours the existing exemptions:

> … the exemptions which exist under Part X enable [the conference] to organise a level of overall service from Australia and into Europe, including inland haulage rates, which is in proper response to the needs of its customers. A fragmented Conference, unable to pool its resources, would not be able to achieve these levels of service … (sub. 2, p. 3)

In a similar vein, Australian Wool Industries Secretariat submitted:

> … the operations of Conferences to the major trade destinations for wool have benefited wool exporters because of the level and frequency of service provided, particularly through the multiplicity of ports serviced directly and indirectly (by feeder) and arrangements for inland distribution in Europe, without restricting the exporters' ability to use non-conference services where preferred … (sub. 14, p. 1)

1 Intermodalism is normally associated with the adoption of electronic data interchange, enabling the progress of shipments to be monitored and documentation to be simplified.

2 Ocean carriers do not have a monopoly over intermodal services. Freight forwarders and non-vessel operating common carriers actively compete in the intermodal freight market.

On the other hand, APSA suggested that Part X exemptions should not extend to intermodal rate-making:

> … because the intent, firstly, in the original concept of exemptions from Part IV was to cover port-to-port pricing only; and secondly, it has the ability to lessen competition. (sub. 22, p. 2)

Overseas regulatory regimes vary in their attitude to collective fixing of intermodal rates. For example, under European Union competition policy, agreements between carriers relating to intermodal operations are not entitled to the block exemption granted to shipping conferences, although an individual or a specific block exemption may be sought in such cases. The European Commission has taken the view that the group exemption in Regulation 4056/86 does not allow shipowners jointly to fix prices for the inland transport leg of a multimodal transport operation. The European Commission has handed down two judgements prohibiting inland price fixing — the Trans-Atlantic Agreement Commission decision (1994) and the Far-Eastern Freight Conference Commission decision (1994) (OECD 1999a).

In contrast, conferences in the United States trades enjoy antitrust immunity with respect to US inland transport services, although conference members must individually negotiate service conditions and prices with land transport carriers (OECD 1999a, p. 23). The 1984 Shipping Act prohibited carriers from entering into joint negotiations with railroads, trucking companies or airlines for transportation within the US. The 1998 Ocean Shipping Reform Act is more permissive, allowing carriers to 'discuss, fix or regulate transportation rates, including through rates' (section 4) as well as 'negotiate with a non-ocean carrier or group of non-ocean carriers (for example, truck, rail or air operators) … any matter relating to rates and services' (section 7). The exemptions are subject to the proviso that such negotiations, and any resulting agreements, are subject to antitrust law and are consistent with the purposes of the *Ocean Shipping Reform Act 1998*.

The Commission has accepted that cooperation and rationalisation by means of a conference may provide desirable outcomes for shippers on the ocean shipping leg of intermodal transport. A lower risk premium may enable carriers to employ larger vessels, and thus benefit from economies of vessel size, while a sizeable conference fleet may generate additional economies as well as provide the coordinated schedules valued by shippers. Furthermore, the Commission has recommended explicitly extending conference exemptions to cover terminal handling because of technical efficiencies and practicalities in container handling.

But the Commission sees no reason why the rationale applying to the blue water component of intermodal transport applies equally to an inland transport industry with a different pattern of costs and underlying structure. In other words, the

Commission is not persuaded that the benefits stemming from cooperation and rationalisation in the blue water leg also arise in domestic transport operations.

Providing individual carriers are able to offer a door-to-door rate, and the right to do so is not in question, it does not appear necessary for conferences collectively to offer such a rate.

Given the level of competition in the Australian road transport industry, there is little scope for conferences to obtain economic rents by offering door-to-door rates. There is even less incentive for a shipper to accept a door-to-door rate that includes an element of economic rent, since the Part X regime allows the shipper the option of buying road transport services directly. However, whilst the Commission thus does not consider that serious economic harm would arise from the ability of conferences to quote door-to-door rates, the logic of the national competition policy requires that the exemptions be removed.

RECOMMENDATION 8.2

The Commission recommends deletion of sections 10.14.2 and 10.22.2 which allow the fixing of door-to-door freight rates by conferences for outward and inward liner shipping respectively. Deleting these sections will require the insertion of a clause in sections 10.14.1 and 10.22.1 permitting conferences to set terminal-to-terminal rates.

8.3 Safeguards for importers

Under Part X, member lines of inward conferences receive the same exemptions from Part IV of the TPA as those available to members of outward conferences (see chapter 4). However, there are major differences between the obligations imposed on the two types of conference. Unlike conferences serving outbound trades, inward conferences are not required to apply for registration of their agreements in order to receive exemptions from Part IV.[3] Further, inward conferences are not required to negotiate with an Australian shipper body over freight rates and service levels.

Several participants called for changes to Part X that would require inward conferences to negotiate land-based charges incurred in Australia with importers

3 Although, as noted by the Brazil Review (Brazil *et al* 1993, p. 122), arrangements covering inward and outward trades have been registered.

and would allow importers to form a designated importers' association.[4] For instance, the Department of Transport and Regional Services noted:

> Complaints from importers concerning the imposition of terminal handling charges suggest there is a case for providing importers with at least some of the countervailing powers provided to exporters under Part X. In this regard, it could be reasonable to require inward conferences to negotiate with importers over charges for Australian land-based services. (sub. 3, pp. 21–22)

Qualified support for increasing the countervailing power of importers in respect of land-based charges in Australia also came from Liner Shipping Services, which stated:

> Lines would be agreeable to a Peak Designated Group of importers being given similar powers to investigate land-based charges in Australia. The only caution is that APSA presently negotiates terminal handling charges at destinations for Australia's exports, and those countries may also establish groups of importers to discuss the impact of such charges if Australia were to seek to regulate, in some fashion, THCs in the inwards trades in Australia. (sub. 10, p. 29)

APSA not only argued that importers should be given powers similar to those currently available to exporters, but sought to extend conference obligations in the inward trades:

> Australian importers should have some legislative protection [from conferences on inward trades]. APSA believes there should be a peak body for importers similar to APSA and its powers could cover: obligations of conferences and consortia to enter into discussions; land-side costs (for example terminal handling charges); [and] other issues as appropriate (for example registration of independent carriers [with significant market power]). (sub. 11, p. 21)

The Importers Association of Australia argued that inward conferences should be required to negotiate with a peak body of importers on land-based charges (it did not specify that the obligations be limited to charges in Australia) as well as ocean-based components of conference charges. The Importers Association argued that it was desirable to require inward conferences to negotiate ocean-based charges because it was becoming more common for importers to purchase goods overseas on a free on board (fob) basis and, consequently, for importers to negotiate directly with carriers (sub. 18, p. 2).[5] The Commission understands that Australian shippers buying on an fob basis, or agents acting on their behalf, normally would negotiate

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4 See submissions by APSA (sub. 11, p. 21), Government of South Australia (sub. 12, pp. 3–4), LSS (sub. 10, p. 29) and DTRS (sub. 3, pp. 21–22).

5 However, Liner Shipping Services commented in the public hearings that shipping lines in various trades had not noticed any major change in the terms of shipping arrangements (for example a shift from cif to fob buying) in the last few years. (trans., p. 46)

the terms and conditions of carriage with shipping lines or consortia located in the country of origin rather than in Australia.

The question of whether to extend the regulation of liner shipping to Australia's inward trades was examined by the Brazil Review (Brazil *et al* 1993, chapter 6). The Review supported extending the regulation of liner shipping to inward shipping and set out possible changes to Part X, namely:

- making exemption depend upon registration of the inward conference agreement in question;
- empowering the Minister to cancel registration where the agreement does not have due regard to the need for inward services to be efficient, economical and adequate;
- allowing affected parties to initiate an investigation of practices under registered conference agreements;
- requiring inward conferences to negotiate over charges for Australian land-based services;[6] and
- requiring registered conferences to negotiate on freight rates, service arrangements and minimum service levels with a designated shipper body (pp. 128–29).

The Commonwealth Attorney-General's Department advised the Brazil inquiry that it could see no reason why Australia could not assert jurisdiction over inward liner shipping in a manner consistent with international legal principles (Brazil *et al* 1993, p. 21). However, as the Department of the Treasury noted in its submission to the Brazil Review:

> … in relation to the actual enforcement of such jurisdiction, it is recognised that certain practical constraints exist and the question of possible conflict with jurisdictional claims made by foreign governments may arise. (Department of the Treasury 1993, p. 68)

In principle, the idea of extending Part X safeguards for shippers to importers has appeal — reducing the cost of transporting Australia's imports would increase national welfare — and moreover, it seems even-handed. However, historically, Australian governments have been cautious about extending Part X provisions to inward trades because of potential jurisdictional conflict and practical difficulties.

6 The Brazil Review did not explicitly consider imposing wider obligations on inward conferences, such as the requirement to negotiate ocean-based charges and land-based charges in other countries (in instances where the Australian importer bears these costs directly).

Extending Part X provisions to importers could impose additional costs on carriers and, ultimately, on shippers. To be workable, such a regime would require the registration of inward conferences. However, some participants considered the administrative costs and registration fees for inward conferences would be small, in part because of similarities between the membership of inward and outward conferences. For instance Liner Shipping Services stated that:

> Actually in most cases the outward and inward [conference] membership are very similar, or exactly the same … 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.
>
> One major exception … is South-East Asia where the [existing] 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 [that costs] would depend on the extent of the registration and how difficult it would be [for carriers]. (trans., pp. 44–45)

Additional, and potentially more significant, costs from extending Part X safeguards to importers might arise if the imposition of obligations on inward conferences brought Australia into conflict with the liner shipping regimes of other countries. As noted in chapter 4, it is an accepted convention that the exporting country regulates outward trades, although Europe and the United States assert jurisdiction over both inward and outward trades. Whilst the Commission is not aware of any case in which the stance taken by the United States and Europe has caused significant conflict affecting Australian exporters, any attempt to extend Australia's jurisdiction to carriers on inward trades could increase the potential for jurisdictional conflict.

Given that the scope for importers to exercise countervailing power under Part X appears to be limited effectively to land-based charges in Australia, and that the Commission recommends that terminal-to-customer-door charges should not be covered by Part X (see section 8.2), the only area left for potential negotiation between conferences and importers is THCs.

The Commission doubts that instituting a registration requirement for inward conferences with the sole or primary purpose of allowing importers collectively to negotiate Australian THCs would be cost effective. That said, the Commission does not consider that importers should be precluded from forming a collective buyer group to negotiate THCs if a cost-effective mechanism can be devised. One possibility is that APSA represent importers' interests in negotiation with inward conferences in relation to THCs.

FINDING 8.2

The Commission accepts the principle that inward shippers should be able to organise in order to exert countervailing power but considers that imposing registration requirements and obligations on inward conferences equivalent to those imposed on outward conferences would impose some costs, and possibly lead to significant jurisdictional problems, for little benefit. However, the Commission does not consider that importers should be precluded from forming a collective buyer group to negotiate Australian THCs if a cost-effective mechanism can be devised.

8.4 Regulation of discussion agreements

Part X defines a conference quite broadly as an unincorporated association of two or more ocean carriers carrying on two or more businesses each of which includes, or is proposed to include, the provision of liner cargo shipping services. This definition potentially covers much more than the traditional formal conference agreement. Liner operators have registered a wide variety of agreements under Part X ranging from full conferences to non-binding discussion agreements, as well as technical agreements covering slot swapping and rationalisation of sailings. The Department of Transport and Regional Services has indicated that discussion agreements clearly meet the Part X criteria for inclusion as conference agreements (trans., p. 80).

Discussion agreements involve both conference members and independent operators on a particular trade route discussing matters of mutual interest, typically including freight rates. Liner Shipping Services described discussion agreements:

> These agreements are normally more embracing [than conferences] in terms of the number of lines in any particular geographical trade, but not all-embracing. Their objective is to reach a non-binding consensus regarding rates, surcharges, rules and other terms and conditions of service in the trade. Members can withdraw on very short notice (typically 48 hours to 30 days notice). (sub. 10, att. B, p. 1)

Liner Shipping Services argued that these agreements provide a more competitive framework than conferences and have been useful in trying to bring some stability to certain trades:

> Discussion Agreements are, in the Lines' views, to be encouraged as providing the necessary umbrella, not only for stability but also to be the foundation for many of the more investment committed arrangements, such as Consortia Agreements. With their minimum service levels, Discussion Agreements also provide strong commitments to service exporters' requirements and contribute to trade stability. (sub. 10, p. 32)

In contrast, APSA is strongly of the view that discussion agreements should not be given exemptions from provisions of the TPA:

> In APSA's view accords and discussion agreements operate to lessen competition. For conference and non-conference lines to compare freight rates is immoral. Lines are either conference or non-conference. Accords and discussion agreements seek to ensure that conference and non-conference operators are not disadvantaged in trades where they compete for the same cargoes. (sub. 11, p. 20)

The Department of the Treasury also argued for stricter control of discussion agreements:

> Discussion agreements seem to be inhibitors of competition. By allowing conference and non-conference operators to collude on a trade, the competitive impact of non-conference operators would appear to be reduced. Discussion agreements should therefore be made subject to the standard authorisation procedures of Part VII of the TPA. (sub. DR35, p. 25)

At first glance, discussion agreements appear to reduce the competitive forces that curb potentially detrimental effects of conferences. On closer examination, however, it must be acknowledged that prohibition of discussion agreements may drive independents to join into full membership of an existing conference in some cases. In light of that, discussion agreements may well be the better alternative, as they are a less restrictive form of co-operation than enlarging the conference to include independent lines. To elaborate, the impact of discussion agreements on the strength of competition is quite complex. To the extent that they involve carriers that would otherwise remain completely independent, discussion agreements will tend, at least initially, to lessen competitive forces on a trade. However, as they are non-binding, they may not have lasting or profound effects.[7] On the other hand, if discussion agreements represent an alternative to an independent operator joining a full conference, then they are likely to provide a relatively more competitive framework but would offer less opportunity for generating the efficiency and service benefits provided by conferences. At present in most shipping trades, even where such arrangements occur, the market remains reasonably contestable.

A problem created if discussion agreements were to be regulated differently is the need to define them. At the margin, differentiating discussion agreements from the somewhat more restrictive and comprehensive conference structure and the somewhat looser consortium agreements covering slot swapping may prove to be difficult. Definitional issues eventually may involve complex legal argument, the

[7] Liner Shipping Services (sub. 10, att. B, p. 1) observed the failed attempt by the South-East Asia Trade Facilitation Agreement to set common price increases. It also indicated that accords (binding agreements on capacity and freight rates between conferences and independents) had not existed on Australian outward trades since the early 1980s.

absence of which appears to have been a notable advantage of the operation of Part X.

APSA suggested a more formal review process for examining new discussion agreements than is the case for conferences:

> If, within three months after the provisional registration of a "Discussion Agreement" the ACCC determines that such an agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, the ACCC may inform the Registrar that the said agreement should not be finally registered. Under such circumstances the Registrar shall not finally register the agreement. Such a decision may be appealed against. (sub. DR34, p. 2)

The Department of Transport and Regional Services also argued for more stringent testing of discussion agreements:

> … a discussion agreement can have some benefits in that it might induce participants in that discussion agreement to reduce say X per cent or something of their capacity. But certainly there are two sides of that to consider and for that reason we think that if Part X is retained that discussion agreements do require probably more thorough examination before they are approved than the normal conference type of agreement. (trans., p. 79)

If existing discussion agreements create concerns about competition, the requirements of section 10.45(a)(iv) for economic and efficient shipping services of reasonable capacity and frequency, provide shippers with some recourse to ACCC investigations and Ministerial intervention. However, in common with other forms of cooperative agreements between carriers, there is no explicit, third-party public interest test for the initial registration of discussion agreements (as conference agreements) under Part X.

The Brazil Review (Brazil *et al* 1993) recommended that accords and discussion agreements be subject to the same registration procedures as traditional conferences, but that in exceptional cases the Minister for Transport obtain a report on whether the agreement paid due regard for provision of adequate, efficient and economical services. This report would then form a basis for deciding on the final registration of the agreement. No action was taken on this recommendation. The Commission notes, however, that under existing Part X provisions, the Minister could request such a report once the agreement had been registered.

FINDING 8.3

The Commission finds that discussion agreements should not be treated differently from other forms of cooperation among carriers. The Commission has not been able to identify clear benefits to offset the costs and difficulties (including problems of definition) that would be created by denying discussion agreements the exemptions currently provided under Part X. Safeguards exist to protect shippers against exploitive practices under discussion agreements.

8.5 Open versus closed conferences

Shipping conferences may be open or closed to new members. While admission to closed conferences requires the consent of all or a majority of conference members, open conferences do not impose restrictions on entry as long as potential entrants agree to abide by an agreed set of rules. Most conferences operating in Australia's outward trades are closed. However, since US law insists on free and equal access in the liner trades, open conferences operate in the trades linking Australia to North America.

Part X currently permits, but does not require, carriers to form closed conferences, albeit subject to certain constraints. For example, section 10.06 (2) of Part X requires that a conference agreement expressly permit any party to the agreement to withdraw from the agreement on reasonable notice without penalty. Similarly, conferences are prohibited from hindering the reasonable participation of efficient Australian flag shipping in outward shipping services. In allowing carriers to choose their preferred form of conference organisation, Australia's stance is similar to that of the European Union and most other countries except the US.

Relatively few submissions commented on the relative merits of open *versus* closed conferences. The Department of Transport and Regional Services, citing the Brazil Review, suggested that open conferences may result in wasteful duplication of services and chronic excess capacity, while closed conferences 'may facilitate a greater capability to provide adequate, economic and efficient shipping services as required by Part X.' (sub. 3, p. 20). Liner Shipping Services also favoured closed conferences (sub. DR28, p. 8).

In contrast, the Department of the Treasury favoured — assuming Part X were to be retained[8] — open rather than closed conferences:

8 The Department of the Treasury favours the repeal of Part X, with liner shipping made subject to general competition law. However, if Part X were to be retained, the Department of the

> The ability of new entrants to join a conference readily, and compete on freight rates with other conference members, would have the effect of placing significant additional pressure on incumbents to pursue productivity gains and to place downward pressure on freight rates. Further, the ease of joining conferences reduces a competitor's entry costs, which heightens competitive pressures. (sub. DR35, p. 14)

APSA too favours open conferences:

> Open Conferences serve to increase competitive pressures within a shipping grouping. APSA believes there should be no restrictions on entry to a Conference. (sub. 22, p. 1)

The Commission notes that there has been considerable debate over the relative merits of open and closed conferences. In general, closed conferences are associated with higher levels of technical efficiency, while open conferences are said to offer superior allocative efficiency (see appendix B). As noted earlier, cooperation and rationalisation by means of a closed conference may provide desirable outcomes for shippers. A lower risk premium may mean the employment of larger vessels operating at high load factors (thus capturing economies of vessel size), while a large conference fleet may generate additional economies and provide the coordinated schedules valued by shippers. However, under certain circumstances closed conferences may be able to exploit shippers by charging monopolistic prices.

In contrast, open conferences not only allow existing members to expand capacity at will but allow new firms to enter the conference freely. Under such conditions, as the Department of the Treasury infers (sub. DR35, p. 14), excess profits will be dissipated. However, the existence of open cartels may give rise to excess capacity and higher costs (Meyrick, sub. 5, pp. 30–36; Brazil *et al* 1993, appendix C, pp. 39–47). Whilst economists have developed several open cartel models,[9] each of which lays stress on somewhat different features, there is broad agreement as to the mechanism which gives rise to excess capacity and rising costs. The key feature of an open cartel is that, while prices are fixed at levels above costs by cartel members, the entry of new firms and expansion of capacity by firms within the cartel are freely permitted. With price fixed, lines compete on a service rather than a price basis. Competition between lines for market share leads to increased frequency of sailings and/or to higher speeds and hence increased costs. Whereas a closed conference is able to control service competition and rationalise its services, an open conference is unable to exert the required discipline. Hence the underlying

> Treasury recommends conferences be open to the free entry or exit of members as is the case in the US trades. (sub. DR35, p. v)

9 See Devanney *et al* (1975) and Jansson and Schneerson (1985). See also discussions of the open cartel literature in Brazil *et al* (1993, appendix C), and Meyrick & Associates (sub. 5, pp. 30–36).

rationale for allowing conferences — to effect the efficient rationalisation of services — is significantly restricted.

In summary, closed conferences are more likely to generate cost-savings through cooperation between carriers, but they may exhibit less internal competition in practice. In such a case, it is necessary to rely more on competition from existing non-conference carriers, potential entrants, transhipment operators, and the countervailing power of shippers to ensure that the cost savings are passed on to shippers as lower rates or more frequent or regular services.

FINDING 8.4

The Commission's view is that the current Part X approach, permitting (but not requiring) carriers to form closed conferences, offers scope for efficiency gains through the employment of larger vessels and cooperative vessel scheduling. The Commission believes that sufficient competitive pressures exist (notably through internal competitive pressures, the operation of non-conference carriers, the threat of entry, the operation of transhipment carriers, and the countervailing power of shippers) to negate any potential monopoly power of closed conferences.

8.6 Declaration of a carrier with substantial market power

Division 9 of Part X provides for the declaration of non-conference carriers with substantial market power. The effect of a declaration is to require the non-conference carrier to meet the same obligations that apply to registered conferences. However, unlike conferences, these carriers receive no offsetting benefits under Part X. Hence Part X increases the extent of regulation faced by such carriers. The task of declaring carriers rests with the Minister acting on a report from the Australian Competition Tribunal.

To the Commission's knowledge there have been no such declarations under Part X. This suggests that the provisions have had no effect on the provision of liner shipping. Consequently, repealing these provisions may be warranted on the basis of economy of regulation. It is always possible that the declaration process could have a detrimental effect on liner shipping services through deterring large independent lines from operating in Australian trades, in competition with conferences. However, there has been no evidence of such problems to date. As noted in chapter 2, independent carriers have become increasingly potent competitors in liner shipping markets. Large non-conference carriers have acquired the ability to compete head-to-head with conferences and consortia in the provision of comprehensive, frequent and reliable liner services.

However, it is possible that the declaration provisions may deliver benefits to shippers if, in the future, further significant concentration in liner shipping occurs, leading to a situation where mega-carriers assume the role previously played by conferences and consortia on some trades.

In the Position Paper, the Commission requested further comments from participants on division 9. The Department of Transport and Regional Services argued for the retention of these clauses:

> In today's environment, where there are some very large non-conference carriers around such as Evergreen or COSCO, it's probably best to have provisions in there that can provide the same sorts of safeguards to Australian shippers in respect of large carriers like that in regard to conferences. (trans., p. 91)

APSA also saw value in provisions relating to carriers with substantial market power:

> We have actually entered four years ago into an agreement with COSCO because they were the only service which serviced China which gave them substantial market power in that market, and we did negotiate minimum levels of service etcetera with them. So I would like to see that clause retained because the market will change, there is no doubt about that. The wheel turns … and we would expect to make use of those clauses when the wheel does turn … (trans., p. 94)

The mere existence of these provisions may be sufficient to encourage a carrier to negotiate with shippers without the need for the formal Tribunal report and declaration of a carrier by the Minister.

FINDING 8.5

The Commission considers that division 9 is worth retaining because, if used judiciously, it does not appear to impose costs on shippers, while offering them additional defences against misuse of market power by any carrier which might come to dominate a particular trade.

8.7 Discrimination between shippers

Section 10.05 of Part X prohibits carriers from discriminating (in relation to rates, levels of service or other matters) between similarly situated outwards shippers on a particular trade route, if the discrimination is likely to lead to a substantial lessening of competition in a market.[10]

10 Section 10.05(2) provides that it is not considered to be discrimination if carriers are allowing for cost differences due to different origins or destinations, different types or quantities of goods carried, the capacity of the carrier or the time at which services are provided. It is also a

There are several arguments for removing these provisions. To the Commission's knowledge the provisions have not been used to date and thus at best may have little practical effect. In these circumstances, the provisions could be repealed in the interests of economy of regulation. Another consideration is that the discrimination provisions were modelled on the price discrimination provisions of the TPA (section 49) which were repealed in 1995 due to difficulties in enforcement (Willis 1989). Similar problems could be expected to bedevil any attempt to implement section 10.05.

Finally, the discrimination provisions may lessen economic efficiency by reducing the pricing flexibility of carriers. In potentially limiting discrimination, the provisions might (in extreme circumstances) lead to a reduction in Australia's exports or imports by preventing carriers from recovering proportionally less of their fixed costs from (that is, discriminating in favour of) shippers who are relatively price sensitive. John Zerby observed:

> The requirement for non-discrimination "in relation to freight rates, levels of shipping services, the provision of equipment and facilities or otherwise" interferes with the ability of the carriers to use flexible pricing policies for the purpose of reducing the excess capacity. Although section 5 of Part X allows a defence for discrimination between shippers under certain conditions, it is not clear that excess capacity arising from compliance with other requirements of the Act would comprise an acceptable basis for discrimination. If it were so intended, it is reasonable to expect that the Act would specify it. (sub. 7, p. 7)

In the event that discrimination led to a lessening of competition in a market, the ACCC or affected parties may be able to take action against carriers under section 46 of the TPA (which deals with the misuse of market power).[11] This would provide some protection against unwarranted discrimination in the event that the discrimination provisions were to be repealed.

The Sea Freight Council of Western Australia supported retention of section 10.05:

> … the price discrimination provisions are part of the package providing some countervailing power to shippers. Again, the presence of the provision constitutes part of the shippers' countervailing power and should be seen as such. (sub. DR32, p. 6)

Liner Shipping Services saw no problems in repealing the price discrimination provisions:

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defence if the carrier was acting in good faith to meet benefits offered by a competitor (see section 10.05(2)(c)).

11 Section 46(1) of the TPA prohibits a corporation which has a substantial degree of power in a market from using that power to: damage a competitor, prevent the entry of a person, or prevent a person from engaging in competitive conduct *in that or any other market*.

LSS has no concern with the deletion of the price discrimination provisions of Part X as they have not been used since their introduction in 1989, and it is not seen how their removal would, in practice, result in any disadvantages for shippers. (sub. DR28, p. 13)

RECOMMENDATION 8.3

The Commission considers that the price discrimination provisions of Part X serve no useful purpose and indeed are potentially harmful if they discourage efficient price discrimination. In addition they would be extremely difficult to implement. Hence it is recommended that section 10.05 be repealed.

8.8 Australian flag shipping

As outlined in chapter 4, an explicit objective of Part X is to ensure that 'efficient Australian flag shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade' (section 10.01(c)). This objective is put into effect by sections 10.45.(a)(v) and 10.53 which essentially are fair trading clauses, designed to ensure that a conference or non-conference carrier with substantial market power does not misuse market power to hinder an Australian carrier. If these provisions are breached, the conference agreement may be deregistered, while a non-conference carrier may face penalties under Part VI of the TPA.

Australian flag shipping also may be assisted by division 11 (sections 10.61–10.67), relating to unfair pricing practices of carriers.[12] These provisions essentially allow anti-dumping action to be taken against carriers whose prices are below 'normal' rates, where these rates threaten viability of the liner trade, and where the practice is contrary to the national interest. The latter clause (section 10.67) requires shippers' interests to be taken into account, including the effect of 'denial of any advantages provided by the practice would have on the competitiveness of Australian industries'. However, the Commission is not aware of any use of the unfair pricing provisions.

The decline in Australian-flag liner capacity in recent years raises the question whether this objective is redundant. The Australian Shipowners' Association argued that although the Part X provisions relating to Australia-flag shipping could be described as dormant, there was some prospect that Australian liner shipping would re-build in future (trans. p. 61).

12 This provision is intended to protect any operator from dumping. The Commission understands that it was intended to address concerns about the impact of subsidised shipping lines on the stability of some trades.

Another, and arguably more important, criticism of section 10.45(a)(v) is that, while action to prevent genuinely predatory behaviour of shipping conferences could serve the national interest, there is a risk that action will be taken in the interests of comparatively high-cost Australian carriers and increase freight rates. For example, Dick (1983) observes that in the 1970s:

> … as the highest cost operator in its trades, ANL would seem to have been more dependent upon the maintenance of conference rates than foreign operators. (p. 14)

This potential tension between the interests of Australian carriers and shippers is highlighted by ANLCL's observation to this inquiry that it has been severely disadvantaged by intense competition in recent years (see sub. 8, p. 2). Yet it is precisely this competition which has driven good outcomes for Australian shippers.

The Commission notes that the future of the Australian shipping industry, including liner shipping, currently is under review. For the purposes of Part X, while scope for action against genuine predatory behaviour and pricing by conferences and non-conferences carriers may be worth retaining, the interests of shippers should be considered explicitly.

RECOMMENDATION 8.4

The Commission recommends that a national interest test, similar to that in section 67 of Part X, apply to any determination by the Minister in relation to sections 10.45(a)(v) and 10.53.

Having examined the proposed modifications to coverage of Part X, the remainder of this chapter examines procedural modifications that have been proposed.

8.9 Penalties and dispute settlement

As discussed in chapter 6, there have been few occasions on which shippers have resorted to the complaints process available under Part X. This is explained partly by Part X which encourages (or does not impede) commercial resolution of disputes between shippers and carriers. But the small number of investigations may also reflect the inflexible remedies available to the Minister under Part X (full or partial deregistration of an agreement). Consequently, there is a case for considering whether there should be changes to the remedies available under Part X, to provide added flexibility in dealing with disputes that cannot be resolved through commercial negotiation and to provide adequate safeguards for shippers.

Several ways of strengthening the remedies for non-compliance with Part X were suggested by participants.[13] One option involves amending Part X to provide for Part VI of the TPA (Enforcement and remedies) to apply to breaches of carrier obligations.[14] Under this option courts would, for example, be able to issue court enforceable injunctions and other orders, impose fines for breaching conference obligations and award compensation in the event that costs are imposed on shippers directly as a result of conferences breaching their obligations under Part X.

Modifications to the penalties and civil remedies available to shippers under Part X were also proposed by the Brazil Review (see box 8.1).

Box 8.1 **Recommendations of the Brazil Review (penalties and remedies)**

To address perceived deficiencies in the remedies available under Part X the Brazil Review proposed that the TPA be amended to:

- permit the Minister to seek enforceable undertakings from carriers where they submit a conference agreement that is substantially similar to a deregistered agreement;
- apply the penalty provisions of the TPA (Part VI) where there is a contravention of any undertaking by a party to a registered conference given under section 10.49 of Part X;
- enable the Federal Court to grant an injunction under section 80 of the TPA where it is satisfied that a party to a registered conference has breached an undertaking; and
- allow a person(s) who has suffered loss or damage as a result of a contravention of Part X (for example, contravening an undertaking or failing to provide information requested by shippers) to recover the amount of the loss or damage.

Source: Brazil *et al* (1993, p. 162).

The ACCC stated that shippers placed a premium on the stability and reliability of existing services and that on occasion they may not wish to suffer a disadvantage by initiating a formal complaint (sub. 16, p. 6). To overcome this perceived reluctance

13 See submissions by the Department of Transport and Regional Services (sub. 3, p. 27), APSA (sub. 11, pp. 4, 19, 23), and Liner Shipping Services (sub. 10, pp. 33–34).

14 Part VI of the TPA sets out the remedies, including pecuniary penalties, injunctions, divestiture and other orders, which are available in the event of a breach of Part IV and the consumer protection provisions (Part V) of the TPA. Part VI also deals with enforcement of undertakings given to the ACCC in relation to matters covered by the TPA other than Part X (such as authorisation undertakings). Part VI applies to breaches of section 46 of the TPA (which is non-exempt conduct under Part X).

on the part of some shippers to initiate a complaint, some participants also suggested that the ACCC be permitted to initiate an investigation as to whether conferences had met their obligations to shippers.[15] For example, Liner Shipping Services said that:

> The role of the ACCC could be expanded under Part X to include investigation of any issues relating to its operation that causes concern, which could be triggered by the ACCC itself rather than waiting for a complaint from shippers or referral from the Minister. (sub. DR28, p. 13)

In principle, allowing ACCC-initiated investigations could benefit shippers if there are cases of shippers who wish to lodge a formal complaint but do not because of concerns that they may suffer some disadvantage or disruption to liner services as a direct result of lodging the complaint.

Several factors suggest that there will be very few cases of shipper reluctance to initiate a complaint. Carriers face strong actual and potential competition, providing shippers with choice of supplier. Also, the Minister and designated shipper bodies already have the power to initiate investigations — these powers seem to be adequate to protect shippers who fear retribution. For these reasons the Commission considers that changes involving a broadening of the ACCC's investigative role under Part X are unnecessary.

Strengthening the remedies and penalties available to shippers through the application of Part VI to Part X has the potential further to discourage non-compliance with the Act. Additional remedies could provide shippers with a more credible threat of last resort.

However, any modification to the current regime must consider the limits of Australia's market power and be enforceable. For instance, imposing weighty penalties on carriers, such as those available under section 76 of the TPA, for failure to comply with the requirements of Part X may disadvantage shippers if conferences choose to disband rather than pay fines or meet other obligations that they consider to be commercially unacceptable.[16]

Providing for increased penalties to apply for breaches of Part X will also necessitate amendments to Part X to define the nature of the obligations on shippers and carriers much more precisely. For instance Liner Shipping Services stated that:

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15 See Department of Transport and Regional Services (sub. DR29, p. 4) and Liner Shipping Services (sub. DR28, p. 13).

16 Section 76 provides for fines of up to $10 million for companies, or $250 000 for individuals, to apply to breaches of the TPA.

> … if a penalty was to apply [to a breach of Part X], it needs to be clear what [the breach] relates to and of course [if] it relates to being notified of any general rate increases [or surcharges] giving 30 days' notice or the kinds of issues that we negotiate with the peak designated shipper body, [these obligations] need to be defined and the penalties [in the event of a breach] equally need to be appropriate. (trans., p. 52)

In addition to the need better to define conferences' obligations, subsidiary questions relating to the appropriate nature and magnitude of penalties also arise.

The Commission is concerned that the option of applying Part VI, without qualification, to breaches of Part X would result in additional costs to shippers and carriers due to the potentially costly and protracted nature of any actions to prove in a court of law that a breach of Part X had occurred and to determine appropriate remedies.

There have been relatively few instances where commercial negotiations have failed to resolve disputes that have arisen between shippers and carriers. There seems little prospect that amending Part X to provide for Part VI of the TPA to apply to breaches of conference obligations would deliver sufficient benefits (in terms of increased compliance with the Act) to justify the potentially significant administrative and enforcement costs. Expanding the involvement of the Courts in resolution of disputes between shippers and carriers is at odds with the philosophy of Part X which is to allow commercial forces to operate with minimal third-party intervention. The ultimate sanction available to shippers is to move their custom to another supplier of liner services.

That said, there may be some scope for amending Part X to enable the Minister to seek a court order in the event of a breach by conferences of an undertaking given to the Minister under section 10.49 of Part X. One way to provide for this change would be to amend Part X to include provisions relating to the enforcement of undertakings. Such provisions could be modelled on section 87C of the TPA (see box 8.2).

An amendment to Part X along the lines of section 87C could provide for more effective and flexible enforcement of Part X while minimising the need to better define conferences' obligations with respect to shippers and minimising the potential for costly and protracted legal action to resolve commercial disputes.[17] Such an amendment would also be consistent with the remedies available under section 10.60 of Part X which provides that remedies available under Part VI shall

[17] In this case, the requirement to define an obligation would only arise in the event of an unresolved dispute between shippers and carriers.

be available if a non-conference carrier with substantial market power breaches the terms of an undertaking given to the Minister or a Ministerial direction.

Box 8.2 **Enforcement of undertakings (section 87C)**

Section 87C allows the Secretary to the Treasury to accept a written undertaking given by a person in connection with a matter in relation to which the Secretary has a power or function. The section provides that if an undertaking has been breached, the Secretary may apply to the Federal Court for an order under subsection (4).

Section 87C(4) provides that if the Court is satisfied that a breach has occurred it may make all or any of the following orders:

(a) an order directing a person to comply with the terms of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person obtained as a result of the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; and

(d) any other order that the Court considers appropriate.

Source: Section 87C of the TPA.

RECOMMENDATION 8.5

The Commission recommends that the Commonwealth Government consider amending Part X to provide for more effective and flexible enforcement of undertakings. The provisions of section 87C of the TPA could serve as a useful model.

8.10 Variations to the registration process

The registration process is a central element of Part X. It was noted in chapter 6 that the process involves checking that agreements meet the requirements of Part X, rather than directly assessing whether they are in the public interest. Shipper bodies have the right to waive negotiations under a conference agreement, hence limiting the possibility of undue delays over minor changes to agreements.

Some participants suggested that the Commission examine whether scope exists for streamlining some aspects of the registration process. For example, Liner Shipping Services said that:

> … a Varying Conference Agreement should be redefined to limit the need for registration when minor amendments are made, or action is actually taken under the

registered Agreement and in conformity with its provisions. [And that] The registration process should be accelerated, with a 45 calendar day period from provisional to final registration if all obligations have been met, unless in exceptional circumstances, the Minister otherwise directs. (sub. 10, p. 34)

The registration process, including the process of registering variations to conference agreements, enables scrutiny of conference agreements and assists shipper associations to undertake negotiations with conferences on the terms and conditions of shipping. As noted by the Brazil Review (Brazil *et al* 1993, p. 182) it also promotes the transparency of conference arrangements. Hence it is an important part of the assistance provided to shippers under Part X. However, if it imposes any undue costs these are likely to be eventually, at least partially, borne by shippers.

In respect of the broader question of placing time limits on the registration process, the Commission notes that Part X does not stipulate a fixed time limit for the overall registration period.[18] Consequently, there is scope for conferences and shippers to agree if they wish on measures to expedite registration.

FINDING 8.6

The Commission considers that the process for registering conference agreements and variations to these agreements provide important transparency benefits and that they be retained. Measures to expedite the registration process are matters for negotiation between shippers and conferences, not for regulation.

8.11 Funding for APSA

APSA was formed in 1990 as the designated peak shipper body representing the interests of Australian shippers in relation to outward liner cargo shipping services. The principal goal of APSA is to ensure that exporters have the opportunity (where desirable) to negotiate with shipping conferences and non-conference carriers with substantial market power (sub. 11, p. 5).

In its submission, APSA stated that its annual budget in 1997 and 1998 was around $60 000[19] and that it requires additional funding and the provision 'in-kind' of

[18] Some time limits are imposed by Part X for decisions on an application for provisional registration and on decisions on an application for final registration (14 days for both). However, there is no time limit for the negotiation of minimum service levels which can occur between provisional registration and final registration.

[19] APSA's funding comes from membership fees paid by eight designated secondary shipper bodies and a number of private shippers. (trans., p. 107)

services in order to continue to meet the Association's objectives (sub. 11, p. 22). APSA said that additional funding was required to enable it to 'do research into various areas', including 'monitoring shipping operations' (trans., pp. 107–109).

APSA proposed that three options for obtaining increased funding for its activities be considered, namely:

- funding similar to that provided to statutory marketing authorities (such as producer levies);
- funding via a business support program such as the export market development grants; or
- a Commonwealth Government grant.

The direct beneficiaries of APSA's efforts are shippers, particularly exporters. The Commission considers that additional funding for APSA, if required, should come from shippers. If additional funds are not forthcoming this will presumably reflect shippers' views of the benefits they are likely to receive from any increase in APSA's activities. Indeed, many large shippers and those involved in secondary shipper bodies may be capable of looking after their own interests without APSA's assistance and smaller shippers may be the major beneficiaries of APSA's efforts. However, many shippers may have an incentive to free-ride on the contributions of other shippers. A possible solution to this free-rider problem would be to require secondary shipper bodies (which must be accredited under Part X) to pay a compulsory annual membership fee to APSA instead of the voluntary subscription. But, while funds for APSA may solve the free-rider problem in relation to APSA's funding, it may create other problems such as removing an element of choice amongst shipper representative services and crowding-out of voluntary contributions to APSA.

If, nonetheless, the Government decides that additional funding for APSA is warranted, any government support would best come from general revenue (through either a grant or via an existing government program). Given the relatively small sums likely to be required, the administration and compliance costs of collecting a levy would far outweigh any revenue raised.

FINDING 8.7

The Commission considers that funding for APSA should come from the beneficiaries of its activities, namely Australian shippers.

8.12 A separate shipping Act?

The Taskforce on Liner Shipping (DoT 1986, pp. 34–35) examined the issue of whether liner shipping regulatory arrangements should continue to be embodied in the TPA or whether they should be contained in a specially created Australian shipping Act. It concluded that there were two key arguments for creating a shipping Act. The Taskforce argued that the fundamental objectives underpinning Part X and the TPA differ. According to the Taskforce report, Part X is based on the premise that enforcing strict competition between carriers may be inimical to the efficient operation of liner shipping services on Australia's trades. It stated that, in contrast, the TPA proceeds on the basis that competition is more likely to produce the most efficient services at the lowest possible cost. The Taskforce also judged that the complex policy objectives embodied in Part X, together with the organisational characteristics of liner shipping, constituted a further case for developing separate liner shipping industry legislation.[20]

Brian Makins submitted:

> Part X does not sit comfortably in the Trade Practices Act. This may well be a source of irritation to the ACCC but it is not a ground for removing Part X from the Act and dropping conference shipping into Part IV. It may however be a ground for repealing Part X and re-enacting it in a separate Australian Shipping Act. (sub. 4, p. 6)

Establishment of a separate shipping Act was opposed by the Department of Transport and Regional Services (sub. DR29, p. 4) and the Sea Freight Council of Western Australia (sub. DR32, p. 6). For instance, the Department stated that:

> Part X has important links to other parts of the Trade Practices Act [and that] there does not seem to be sufficient arguments to justify a separate shipping Act. (sub. DR29, p. 4)

Certainly there is a different approach to enforcing competition policy between Part X and Parts IV and VII of the Act. However, there remain important links between them. These three parts of the TPA implement competition policy and have the same underlying objective of promoting efficient outcomes. The discussion in chapter 7 indicates that regulation of shipping could be handled (but not necessarily optimally) under Part VII.

However, introducing a separate shipping Act covering competition policy for liner shipping may institutionalise the different approaches to enforcing competition policy embodied in Parts X, IV and VII of the TPA. Creating a separate shipping

[20] In its response to the Taskforce report (the Trade Practices (International Liner Cargo Shipping) Amendment Act) the Government accepted a number of the recommendations of the Taskforce but did not create a separate shipping Act.

Act also may encourage introduction of provisions covering more than just competition policy.

FINDING 8.8

Regulations governing international liner shipping should be retained in the TPA.

9 Appropriate regulation: the Commission's assessment

The Commission's task

The terms of reference for this inquiry ask the Commission to report on appropriate arrangements for regulation of international liner shipping, taking into account three objectives. The complete terms of reference are reproduced on pages V–VI, but briefly, these three objectives are:

- that regulation/legislation should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives cannot be achieved *more efficiently* by other means. (It should be noted that this test differs somewhat from the *Competition Principles Agreement* guiding principle outlined in box 1.1);
- to have regard to: access of Australian exporters to competitively priced international liner cargo shipping services that are of adequate frequency and reliability; public welfare and equity; economic and regional development; consumer interests; the competitiveness of business including small business; and efficient resource allocation; and
- the Government's commitment to improve the competitiveness of markets, especially infrastructure services.

Why regulate liner shipping?

The principal reason for regulating international liner shipping is the industry's propensity to form cooperative structures — that is, conferences. As discussed in chapter 3 and appendix B, there appear to be sound economic reasons for allowing such cooperation. In contrast to bulk shipping where each vessel carries a single commodity on a charter basis, demand for general cargo shipping is diverse in terms of cargo size and type as well as aspects of service. The costs of coordinating these diverse demands virtually rule out ship chartering as an efficient form of service delivery. The supply of regular, scheduled liner services provides a means of reducing transactions costs so that shippers with diverse demands are able to access shipping services.

Liner shipping conferences and other cooperative arrangements such as consortia, can provide a mechanism for efficient delivery of scheduled, direct shipping services on a particular trade route. Given economies of scale in ship size, as well as economies of fleet size, high fixed costs relative to variable costs, demand uncertainty, and the absence of regulatory or significant economic barriers to entry to liner trades, cooperative arrangements can reduce risk and costs for individual lines and thus facilitate the provision of efficient, frequent and reliable shipping services in accord with market requirements. Moreover, it appears that cooperation between several lines to provide a regular service on a particular route may be more efficient than provision of the service by a single large company. A frequent, regular service requires the commitment of a number of ships (especially on long trades), which may reduce flexibility and increase risk exposure for a single operator.

By definition, conferences constrain competition between member lines. But it is highly unlikely that, if conferences (and other cooperative arrangements which are covered by Part X) were prohibited, equivalent levels of service would (or could) be provided by all former conference members operating individually on each trade. It is more likely that, if conferences were proscribed, carriers would merge, thus internalising the conference, or that some lines currently operating within a conference would leave the trade, allowing remaining providers to expand and take a larger share of the trade. In either case, however, one form of cooperation, the conference, essentially is replaced by another — a larger, formal company. But as noted above, while the market might reorganise to provide the regular liner service, an alternative mode of delivery may not be first-best.

Nonetheless, market concentration (however it comes about) increases the potential for market power and abuse of that power. It is concern about the potential for market domination by liner shipping conferences that rightly attracts the attention of governments worldwide.

Role of the market

There are two broad ways in which potential market power of conferences can be constrained — by the market itself and via regulatory intervention. Evidence presented in chapters 5 and 6 suggests that market forces have acted as an effective constraint on market power of conferences and that competition from independents, especially those providing transhipment services, has intensified significantly in recent years. This is reflected in declining conference shares in almost all of Australia's liner trades. Competition between conference members also appears to

have been an additional source of competition in liner shipping markets.[1] As discussed in chapter 6, conference arrangements appear to have adapted to the increasing demands of shippers for more tailored service arrangements.

Though no examples have been drawn to the attention of the Commission, there may be instances where conferences have dominated a particular trade, or segment of that trade, and earned excess profits. However, if this has occurred, given comparatively low barriers to entry to liner trades, and overwhelming evidence that lines aggressively pursue profitable opportunities, quickly redeploying ships and providing new services, new entry will have been encouraged relatively quickly.

It has been suggested that precisely because shippers have a wide menu of shipping services from which to choose, and because conferences face intense competition from non-conference carriers, the conference structure is redundant (see Australian Consumers' Association, sub. DR39; and Department of the Treasury, sub. DR35). The Commission disagrees. The intensity of competition in liner shipping markets ensures that no carrier can earn persistent excess profits. If conferences survive in this environment they must be delivering a specialised type of service that shippers demand and, moreover, be providing it efficiently. In these circumstances, their removal would not deliver any benefits. Indeed it would *reduce* efficiency, competition and choice in the marketplace.

Evidence collected by the Commission and provided by shippers supports this view — conferences provide a high quality service which attracts a commensurate price premium. In this regard the shipping market is like many others where a range of differentiated services and goods is provided and produced by a variety of production units. Even if conference market shares were to continue to decline due to aggressive competition, this would not imply that regulators should second-guess an efficient market structure and procure or hasten the demise of conferences.

Appropriate regulation

Although market forces appear to have ensured good outcomes for Australian shippers, there are two main reasons for regulation of conferences. First, several conference practices constitute *prima facie* breaches of Part IV of the TPA. Therefore, if conferences are to operate at all, they require some form of exemption

[1] On US trades, where actual rates had to be published and adhered to and made available to all shippers (in force until May 1999), there was limited incentive for 'chiselling' by individual lines. Since relaxation of public tariff filing and common carriage, there has been considerable movement in rates as well as an increase in the range of rates available to customers (see trans., p. 9).

or authorisation. Second, and more fundamentally, as an importer of liner shipping services, it is in Australia's interests to exercise countervailing power appropriately. This may be facilitated by legislation or regulation.

The ultimate objective of any regulatory regime should be to enhance national well-being. As discussed in chapter 3 and appendix B, given that Australia relies almost entirely on foreign liner shipping services, the national interest in relation to international liner shipping is congruent with the interest of Australian shippers in obtaining appropriate quality services at the best possible price.

If it is accepted that conferences and other cooperative structures which characterise liner shipping services can promote efficiency and service levels, an appropriate regulatory regime will be one that allows such arrangements but which, at the same time, ensures that the efficiency gains and lower costs made possible by such arrangements are shared with Australian shippers and, through them, the Australian public.

Given the characteristics of international liner shipping and where the national interest lies, the Commission considers that a desirable regulatory regime will:

- allow market arrangements in liner shipping that can generate efficient outcomes;
- minimise adverse effects on competition;
- promote Australia's bargaining power and provide effective constraints against abuses of market power by foreign liners;
- involve minimal regulation to achieve desired outcomes;
- be compatible with international regulatory regimes (that is, be workable and enforceable);
- promote predictable outcomes for Australian shippers (in the sense of providing them with adequate frequency and reliability of service); and
- involve low compliance and administration costs, and be transparent and flexible.

In addition, an appropriate regulatory regime must be able to cope with developments in international liner shipping markets. There is some suggestion that current price levels are unsustainable and that capacity rationalisation is inevitable. Certainly global shipping markets are in a state of disequilibrium and industry concentration via mergers and global alliances is likely to increase in an effort to reduce costs. Whether this process leads to rate increases is unclear — capacity rationalisation will tend to increase rates while cost savings will reduce them. However, even if rationalisation were to result in higher (equilibrium) prices, this

would not necessarily indicate the emergence of an uncompetitive market. Indeed, there appears to be no reason why the fundamental contestability of liner shipping trades and competitive forces will diminish. Nonetheless, a regulatory regime as far as possible should be able to protect the interests of Australian shippers were global competition to abate substantially.

Regulatory options

There are two major alternative approaches to regulation of international liner shipping — that currently embodied in Part X of the TPA, and application of the general provisions of the TPA, including Part VII authorisation provisions. Other options include an industry-specific notification procedure, block authorisation or an industry code.

Part X allows individual shipping firms to enter into cooperative arrangements that otherwise would contravene certain sections of the TPA. Though the exemptions from the TPA allow shipping lines to enter into conferences and similar arrangements (which reduce competition between members), it does not compel them to do so. Nor does it constrain liner carriers from entering the market and operating outside the conference, as is the case for most other legislation deemed to restrict competition. In this sense, Part X could be described as taking a permissive stance towards *production* of liner shipping services.

However, Part X does not take a permissive approach to the *effects* of cooperative arrangements on Australian shippers. Indeed, the overriding objective of Part X is to promote the interests of Australian shippers (and thus the national interest). Specifically, Part X attempts to promote the negotiating strength of Australian shippers by allowing (but not requiring) them to form buying groups and requiring conferences to negotiate with these groups and commit to minimum service levels, and providing for Australian Competition and Consumer Commission (ACCC) investigations of breaches of Part X obligations by shipping lines (with scope for full or partial deregistration of conference agreements by the Minister). Moreover, Part X does not exempt liner shipping operators from application of section 46 of the TPA.

While Part X does not contain an explicit *ex ante* 'public interest' test, the public interest is monitored continually by shippers whose interest is aligned with the public interest and who have a vested interest in ensuring they obtain the best-possible outcomes. Shippers can request intervention by the regulators — the Minister and the ACCC — at *any* time they consider that conferences have breached their obligations under Part X, including the requirement that shipping services are 'economic and efficient'. The ACCC also can take independent action under

section 46 but it has never exercised this option. Part X also has been subject to regular public reviews. In addition to the current inquiry, it has been reviewed in 1977, 1986 and 1993 (see chapter 4).

The general provisions of the TPA, on the other hand, proscribe certain actions such as joint price setting (see chapter 7). If the general provisions of the TPA were applied to liner shipping, conferences (and shipper bodies) would have to be authorised under Part VII, almost certainly on a case-by-case basis, and demonstrate, *ex ante*, that they would operate in the public interest. To satisfy the ACCC that the public interest would be served, it is possible that conferences would be required to enter into price or other undertakings. Authorisation could also be revoked if the ACCC considered that circumstances had changed materially.

Depending on how it was implemented, a notification procedure could, at one extreme, resemble Part X or, at the other extreme, resemble case-by-case authorisation. An industry code might operate in a similar fashion to Part X but probably would be subject to (block) authorisation under Part VII. An authorised industry code also may codify behaviour to a greater extent than Part X. Both a notification procedure and block authorisation would require amendment of the TPA — the former applicable to liner shipping only while the latter could be industry-specific or available to industry generally.

The Commission's assessment

In assessing the regulatory regime most likely to deliver the best outcomes for Australians generally and shippers specifically, the Commission has taken into account a number of factors relevant to the liner shipping industry, including:

- shippers' interests in relation to shipping services coincide with the public interest. Shippers as profit-maximisers generally will have a strong incentive to obtain the best-possible service for the lowest-possible price (failure to do so typically will mean lower sales and/or lower producer prices);
- Australia relies almost entirely on foreign liner services. If the Australian shipping market became relatively costly, carriers (whose assets are highly mobile) could reduce their commitment to Australian trades or even discontinue the conference service;
- evidence of substantial production economies in liner shipping coupled with the need for regular, coordinated services suggests that cooperation in some form will characterise the industry even if conferences were proscribed;

- consistent evidence of effective competition in liner shipping markets and low barriers to entry to liner trades suggest that market forces provide effective regulation of conference market power;
- all countries with which Australia trades currently not only allow the formation of conferences but also provide general, automatic exemptions from competition law. There is no indication that this situation will change in the foreseeable future; and
- the nature of the industry is extremely dynamic.

The regulatory approach embodied in Part X is tailored to these market characteristics. Part X essentially operates as an industry code where the market operates relatively free of intervention on a day-to-day basis and where regulators take action only in the event that Australian exporters (whose competitiveness depends on efficient shipping) are dissatisfied with the behaviour or performance of conferences. Evidence available to the Commission suggests that this approach has been successful by promoting efficient supply of regular shipping services by allowing conferences, counter-balanced by market competition and the countervailing role given to Australian shippers. Shippers who participated in this inquiry claim that conferences provide comprehensive services (especially to smaller capital-city ports). They also observe that they have a wide range of conference and non-conference services from which to choose. Moreover, Part X has operated at comparatively low administrative cost to government and industry and in harmony with overseas regimes.

That said, Part X has been criticised by some for lack of transparency and as being not sufficiently flexible to deal effectively with any unacceptable behaviour of conferences. While not all criticisms appear warranted, there is scope for some improvement in the operation of Part X (see chapter 8).

The Commission has explored in some detail how the main alternative regime, authorisation, might operate with respect to liner shipping (see chapter 7), but any discussion necessarily is hypothetical.

As described above, a fundamental difference between Part X and authorisation is that the authorisation mechanism provides greater scope for direct third-party intervention on public interest grounds before carriers can give effect to a conference agreement. The Commission agrees that promotion of the public interest is paramount. But a key issue in this inquiry is determining the best way of representing and upholding that interest. Given the degree of market competition and the fact that the public interest coincides with the interest of shippers in obtaining the best-possible shipping services as cheaply as possible, the question is

whether providing scope for discretionary third party intervention is necessary or desirable. The public interest is vigilantly represented by the shippers themselves.

Given the degree of competition in liner shipping markets and the complexity of pricing and heterogeneity of services provided, the Commission does not consider it likely that there would be any benefits from more rigorous regulation of, or intervention in, conference arrangements. There also are serious doubts as to whether, in practice, Australia could enforce its competition laws against foreign service providers in the event that authorisation were not granted.

Administrative and compliance costs also would appear to be significantly higher under case-by-case authorisation. While the Commission accepts that these costs apply to other Australian industries which seek authorisation under Part VII of the TPA, from the point of view of an international liner carrier, the relevant comparison is regulatory costs (and profits) in non-Australian trades. If Australia imposes higher costs on foreign liners than other governments, which reduce carrier profitability, conference services to and from Australia, at the margin, are likely to decline.[2]

It is feasible that the authorisation process *could* function in a similar manner to Part X — that is, allow conferences to operate comparatively freely, albeit subject to certain requirements to negotiate with shippers coupled with sanctions against abuse of market power. Indeed, the Commission is of the view that, were Part X to be repealed, application of Part VII *eventually* would see a Part X-type regime (that is, conditional block exemption) re-emerging. The process could be protracted and costly, however, and probably would require legislative amendment to allow block authorisation.[3] Indeed, the industry-code approach of Part X appears antithetical to the approach of Part VII as it currently stands and as it has been practiced.[4]

While acknowledging the intensity of competition in liner shipping markets and the role of conferences in providing efficient services, some participants to this inquiry

2 In other words, if a country is essentially a price taker, imposition of an import 'tax' will reduce national welfare by increasing price or reducing quantity. In this case the tax is in the form of higher regulatory costs imposed on conferences only. While other forms of service might expand to fill the gap, the conference service will diminish. It is difficult to see how this could be considered an improvement if conferences supply a differentiated service which shippers value.

3 It is interesting to note that European regulators currently are moving towards a common understanding with carriers after several years of unresolved legal disputes regarding the limits of the EU block exemption from competition laws (see chapter 4 and appendix F for discussion of the EU model).

4 As noted in chapter 7, the Commission has been unable to find any extant industry codes authorised under Part VII which operate in a similar way to Part X.

have argued that consistent application of domestic competition laws should be the principal criterion for assessing appropriate regulation of this industry (see Department of the Treasury, sub. DR35; ACCC, sub. DR36).

The Commission agrees that it is desirable that no industry or sector of the economy be given special favours which may result in resource misallocation, inefficiency or undesirable income transfers. However, virtually all liner shipping to and from Australia is provided by foreign carriers who use very few Australian resources. The major potential for resource misallocation is if Australian shippers cannot access adequate quality liner shipping at competitive rates. If rates are distorted, activity and investment in export and import-competing sectors likewise will be distorted. The irony is that imposition of additional costs on some foreign carriers in the interests of uniformity of treatment of industries may distort resource allocation by effectively increasing transport costs for Australian exporters and importers.

At any rate, Part X does not give international liner shipping conferences a protected monopoly nor does it give an unfettered right to form conferences. Liner shipping conferences are required to meet certain obligations to Australia shippers and are not granted exemption from section 46 of the TPA. In short, competition policy *is* applied to liner shipping, albeit in an unusual way. But insofar as the interests of Australian shippers are concerned (and through them the national interest), this approach appears to be performing well and doing so more efficiently than the available alternatives.

Even if the Part X-type approach could be replicated in an industry code or notification procedure, at the very least transitional costs would be incurred. Moreover, with notification, and with an industry code (unless it had block authorisation), there would be an additional level of uncertainty — that is, the uncertainty of not knowing whether in practice it would be administered in a manner similar to Part X or similar to Part VII authorisation. In the event of the latter type of administration, the advantages and disadvantages of Part VII authorisation, as already discussed, would apply. Moreover, liner shipping *in effect* would continue to receive 'special' treatment. If a concern of regulators is the undesirable signal 'special' treatment sends to industries, it is a moot point whether that signal is stronger with the existence of Part X or a Part X-type regime embodied in the 'general' provisions of the TPA which are accessible to all industries.

The Commission has been asked to report on appropriate regulation for international liner cargo shipping taking into account, inter alia, the objective that regulation/legislation should be retained only if the benefits exceed the costs to the community and if alternatives cannot achieve the objectives of the regulation/legislation more efficiently.

The Commission concludes that, given competition and market contestability, the benefits to Australian shippers (and hence the community overall) of allowing conferences and other cooperative arrangements to operate exceed any costs.

Moreover, given the fact that the interests of Australian shippers are aligned with the national interest, and that they will vigilantly represent their interests, the Commission considers that regulation of conferences under Part X is appropriate.

In particular, Part X:

- ***involves minimal regulation and promotes commercial relationships and commercial dispute resolution;***
- ***is neutral with respect to market arrangements and has not hindered efficient market outcomes or hindered competitive forces in liner shipping markets;***
- ***has supported the negotiating position of Australian shippers and assisted in providing them with predictable service outcomes;***
- ***is compatible with international regulatory regimes; and***
- ***is low cost.***

Repeal of Part X and its replacement by the general provisions of the TPA (as they currently stand and as they have been applied) is unlikely to produce outcomes as good or better than Part X, or do so more efficiently. While the Commission accepts that a Part X-type approach could be applied within the general provisions of the TPA, this may require industry-specific legislation (a notification procedure) or possibly general amendment of the TPA (block authorisation). More importantly, there can be no certainty that the level and type of regulation embodied in Part X, which the Commission assesses is appropriate, would be implemented under these options. The Commission therefore concludes that the alternatives cannot achieve the objectives of the legislation more efficiently than the current legislation. The Commission therefore recommends that Part X be retained, albeit with the minor amendments outlined in chapter 8.

The Commission also recommends that the situation be re-examined in 2005 to ascertain whether the conclusions of this review are substantially altered as a result of technological or institutional changes in the international liner shipping market.

A Public consultation

A.1 List of submissions

Participant	*Submission No.*	*Date Received*
ANL Container Line Pty Ltd	8	7 May
Australian Chamber of Commerce and Industry	15	12 May
Australian Chamber of Shipping Ltd	1	3 May
Australian Competition and Consumer Commission	16	14 May
	DR36	30 August
Australian Consumers' Association	DR39	7 September
Australian Dairy Industry Council	DR26	9 July
Australian Peak Shippers Association	11	10 May
	22	7 June
	DR27	13 July
	DR34	10 August
Australian Shipowners Association	17	17 May
Australian Wool Industries Secretariat	14	12 May
BHP Company Ltd	24	11 June
Business Council of Australia	DR40	7 September
CENSA	13	11 May
Department of Foreign Affairs and Trade	23	10 June
Department of Infrastructure – Victoria	DR30	26 July
Department of the Treasury	DR35	23 August
Department of Transport and Regional Services	3	5 May
	DR29	23 July
Importers Association of Australia	18	17 May
Interlaine	2	5 May
Law Council of Australia	19	18 May
Liner Shipping Services Ltd	10	7 May
	DR28	23 July
	DR33	9 August
	DR37	30 August
Makins, Brian	4	6 May
Meyrick & Associates Pty Ltd	5	7 May

(Continued next page)

Participant	*Submission No.*	*Date Received*
National Farmers' Federation	21	20 May
	DR31	22 July
P&O Nedlloyd Container Line Ltd	6	5 May
Queensland Government	DR38	6 September
Sea Freight Council of Western Australia	9	7 May
	DR32	30 July
South Australian Government	12	10 May
Tasmanian Government	25	18 June
Western Australian Shippers' Council Inc	20	19 May
Zerby, John	7	7 May

A.2 List of visits

Australian Capital Territory

Australian Competition and Consumer Commission
Australian Bureau of Statistics
Bureau of Transport Economics
Department of Transport and Regional Services
Minerals' Council of Australia
Department of the Treasury

New South Wales

Australia New Zealand Direct Line
Australian Meat Council
Liner Shipping Services
Maersk Line
Mitsui O.S.K. Lines
NYK Line - Australia
P&O Nedlloyd
Wilhelmsen Line

Victoria

Australian Council of Wool Exporters
Australian Dairy Industry - Murray-Goulburn Corporation
Australian Horticultural Exporters Association
Australian Peak Shippers Association
BHP Transport

Pacific Dunlop
Ricegrowers Co-operative Ltd

A.3 Position paper public hearings - participants

Sydney — 28 July 1999

Bureau of Transport Economics
Liner Shipping Services Ltd
John Zerby

Melbourne — 29 July 1999

Australian Shipowners Association
Australian Peak Shippers Association
BHP Company Ltd
Department of Transport and Regional Development
Law Council of Australia

A.4 Participants' views

Submission	*Submission no.*	*View on Part X*	*Participant's comments*
Australian Chamber of Shipping	1	Retain Part X	Part X has achieved its major objectives. Exporters have the ability to use conference or independent service providers depending on commercial considerations. Competition and service levels in liner shipping are high.
Interlaine	2	Retain Part X	Part X has enabled wool shippers and receivers to negotiate adequate service levels and lower freight rates. Repealing Part X would lead to loss of direct services which are valued by wool shippers and higher rates. Supports inland rate setting by conference.
Department of Transport and Regional Development	3 & DR29	Retain Part X	Part X is a simple system that relies on conferences and exporters reaching commercially acceptable outcomes through negotiations. Part X is a self-regulatory system that involves significantly less intervention and regulation than Part VII. Despite falling freight rates conference service levels continue to meet the needs of shippers. Consideration should also be given to improvements to Part X covering penalties, accords and discussion agreements, collective negotiation of stevedoring contracts, intermodal rate setting, increasing the role of the ACCC, and protection for importers.
Brian Makins	4	Retain Part X	Part X is a sensible approach to regulation and consistent with international practice. Automatic exemption for conferences provides certainty. Authorisation would be unworkable. May be grounds for creating a separate Shipping Act to replace Part X.
Meyrick & Associates Pty Ltd	5		Reviews economic issues that need to be considered in examining the regulation of Australia's liner trades. Acceptance of shipping conferences stems from characteristics of the industry which require coordination and rationalisation. Argues conditions in liner shipping markets are such that the benefits of conference activities will flow to shippers.
P&O Nedlloyd	6	Retain Part X	Removing Part X will result in less choice for shippers, fewer direct services, fluctuating freight rates, and lower investment by carriers in Australian trades. Authorisation will create uncertainty. International compatibility of regulations is required to facilitate trade.

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Submission	*Submission no.*	*View on Part X*	*Participant's comments*
John Zerby	7	Retain Part X	Outlines the development of liner shipping regulation especially in the United States. Argues that a primary goal of the review should be to establish the type of multilateral regulatory regime for liner shipping that best serves Australia's interests.
ANL Container Line	8	Retain Part X	Despite the recent sale of ANL to a foreign company, ANCL still meets the criteria for an Australian flag carrier. ANLCL has been hindered by competitors actions. Large falls in freight rates have hampered ANCL from effectively operating in the marketplace. Supports retention of Australian flag shipping operator provisions.
Sea Freight Council of Western Australia	9 & DR32	Retain Part X	The nature of international liner shipping warrants a different treatment to domestic industries. Countervailing powers for shippers are critical to achieving appropriate outcomes for Australian shippers.
Liner Shipping Services Ltd	10, DR28, DR33 & DR37	Retain Part X	The objectives underpinning Part X have been achieved by a cost-effective and light-handed system of regulation that is compatible with the systems of our major trading partners. Liner shipping conferences provide a bus-like service and require an exemption if they are to continue cooperating. Conferences enhance efficiency and market competition and low barriers to entry ensure that the gains are passed on to shippers. Removal of Part X would lead to bunching and gapping of vessel arrivals and departures and price fluctuations. There would be a reduction in refrigerated services and possibly conflicts with the liner shipping laws of our major trading partners. Authorisation would have an uncertain outcome, proceedings are slow and costly and each time a conference arrangement is altered there would be a need for a new authorisation. Difficulties would be encountered in obtaining authorisation for common rate setting and the authorisation process would not be compatible with the regulatory regimes of our major trading partners. Suggested reforms to modernise Part X include the following areas: streamlining existing provisions (eg. service contracts to replace loyalty contracts); exemption for collective negotiation of stevedoring charges; collective rate setting allowed for land-based and intermodal services;

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Submission	*Submission no.*	*View on Part X*	*Participant's comments*
			streamlined registration procedures; designation of a peak importer body; introduction of dispute mediation procedures.
Australian Peak Shippers Association	11, 22, DR27 & DR34	Retain Part X	Countervailing powers and safeguards for shippers are required to balance the considerable power of conferences in shipping markets. Removal of Part X exemptions would result in the loss of these countervailing powers even though conferences would continue to operate without regard for Australian law. Authorisation would not provide an environment as stable and predictable as that facilitated by Part X. Part X should be strengthened to provide for: application of Part VI penalties and remedies; the ACCC to be given powers to prosecute and apply penalties; shippers to be given the right to pursue damages for breaches of conference obligations; and additional funds to be provided to APSA. Discussion agreements are immoral and conferences should be required to be open. Exemptions should not extend to intermodal rate making.
South Australian Government	12	Retain Part X	Part X has provided benefits to shippers through facilitating services to ports in SA that would otherwise be unavailable. Changes to Part X would not be supported if they had adverse regional impacts and discouraged the development and retention of shipping services in SA.
CENSA	13	Retain Part X	Part X has worked well and is consistent with international liner shipping regimes. International comity should be an important principle guiding the review.
Australian Wool Industries Secretariat	14	Retain Part X	Supports the position put in the Interlaine submission. The exemption for liner conferences has not adversely affected competition in liner shipping markets. Operations of conferences have benefited wool exporters through providing higher service levels, greater port coverage and more efficient inland distribution arrangements.
Australian Chamber of Commerce and Industry	15	Retain Part X	A predisposition to maximising competition would normally lead ACCI to advocate abolishing Part X. However, shipper members of the Chamber consider that abolishing Part X could prejudice liner services. ACCI supports efforts to develop a multilateral competition agreement.

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Submission	*Submission no.*	*View on Part X*	*Participant's comments*
Australian Competition and Consumer Commission	16 & DR36	Repeal Part X	The current treatment of liner shipping is not justifiable nor consistent with the fundamental tenets of Australian competition policy that provides for consistency of regulatory approach from a national rather than industry specific regulator. Liner shipping exemptions should be subject to review under authorisation procedures. Advantages of authorisation include transparency and uniformity. Industry's need for certainty timeliness and cost-effectiveness have to be balanced against the requirement that anti-competitive practices have to be assessed after detailed public consultation. The submission also outlines a possible transitional regime involving notification of liner shipping arrangements.
Australian Shipowners Association	17	Retain Australian flag shipping provisions of Part X	The decline in Australian flag shipping is not a reason for removing the Australian flag shipping provisions of Part X. The decline in Australian shipping is caused by inadequate government policies which need to be addressed.
Importers Association of Australia	18	Extend Part X protections to importers	Part X should be amended to provide for: designation of a peak importer body; and a requirement that carriers negotiate and consult with importers on ocean and landside charges and other issues deemed appropriate. Alternatively, Part X should be removed so that importers have full protection under Part IV of the TPA.
Law Council of Australia	19	Repeal Part X	Part IV of the TPA should be of general application to the provision of all goods and services unless exceptional circumstances require that an industry be treated differently. The special circumstances of liner shipping do not justify its exemption from Part IV. The characteristics of liner shipping can be addressed by minor changes to the TPA. The objectives of Part X can then be achieved through Part VII processes and therefore Part X should be repealed.
Western Australian Shippers' Council Inc	20	Retain Part X	Despite changes in shipping markets since 1993, abolishing Part X adds to the risk that service levels to WA would be reduced. Current low rates and excess capacity have already resulted in some service withdrawals from WA. If Part X is repealed there would be a need for carriers to be able to form consortia arrangements.

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Submission	*Submission no.*	*View on Part X*	*Participant's comments*
National Farmers' Federation	21 & DR31	Repeal Part X	There should be a measured and predictable withdrawal in the protection offered by Part X, utilising one of the options outlined in the inquiry issues paper or another option incorporating matters raised in the submission.
Department of Foreign Affairs and Trade	23	Retain Part X	The consensus among Australian exporters is that Part X: should be retained; guarantees that services are provided to smaller ports, thereby assisting exporters; and provides essential countervailing powers for exporters. The focus of the review should be on ensuring that appropriate safeguards are in place to prevent possible abuse of market power arising from cartels permitted under Part X. The submission also outlines developments in the WTO on maritime issues.
BHP Company Ltd	24	Important to maintain the right of collective action by shippers under Part X or alternatives.	Operation of market forces in liner shipping has resulted in lower freight rates and access to adequate and reliable shipping services. Abolition of Part X would probably result in added turbulence and volatility in the liner trades servicing Australia. It might also lead to lower freight rates and consolidation of carriers. If shipping cartels are allowed to form it is important to maintain the elements of Part X which enable collective action by shippers.
Tasmanian Government	25	Retain Part X	The major beneficiaries of Part X are Australian exporters and not conference carriers. Removal of Part X would not lead to shipping companies transferring to authorisation under the TPA. There is no evidence of abuse of market power that would warrant removal of Part X.
Australian Dairy Industry Council	DR26	Retain Part X	Part X provides necessary and effective means for ensuring that conference exemptions enhance market transparency and efficiency. Alternative means of achieving this control would not be as efficient as Part X.
Department of Infrastructure Victoria	DR30	Retain Part X	Part X is necessary given the characteristics of Australian liner trades. Information disclosure is an issue of concern and there is a need to ensure appropriate mechanisms exist for monitoring industry arrangements. Greater transparency of Part X arrangements should be pursued through requiring conference agreements submitted for registration to be made available for public comment by the Registrar of Liner Shipping.

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Submission	*Submission no.*	*View on Part X*	*Participant's comments*
Department of the Treasury	DR35	Repeal Part X	National competition policy requires that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction outweigh the costs and the objectives can only be achieved through restricting competition. Part X is an anomaly in the competition policy framework and is not necessary to ensure the availability of regular liner shipping services. Given strong shares of non-conference operators serving regional ports it is difficult to see how repealing Part X would adversely affect services to regional ports. The development of an industry code could address concerns about compliance costs, consistency of application across conferences and business certainty. If Part X is retained significant amendments are required including: removing exemptions for discussion agreements and shipowner accords; requiring conferences to be open; and removing exemptions for inward conferences.
Queensland Government	DR38	Retain Part X	Conference arrangements provide shippers with access to regular port calls and low freight rates and are in line with the practice of Australia's major trading partners. Current freight rates and service levels are unlikely to be sustained in the absence of conference arrangements.
Australian Consumers' Association	DR39	Repeal Part X	Anti-competitive behaviour permitted by Part X can be historically justified but no longer passes the test provided under the national competition policy. It is not clear that the intent of the legislative review process has been followed by the Productivity Commission.
Business Council of Australia	DR40	Repeal Part X	Part X is an anomaly in Australia's competition policy framework. While there have been historical reasons for granting special exemptions to shipping conferences Part X is the only part of the TPA that provides industry specific exemptions. The need for continued exemptions for liner shipping conferences must be questioned given the robust competition in shipping markets serving Australia.

B Economic issues

B.1 Role of conferences and other cooperative arrangements

This section very briefly canvasses views about the role and impact of shipping conferences.

Economists hold differing views as to the role and likely effects of liner shipping conferences. While some argue that conferences operate as cartels and possess substantial monopoly power, others focus on the potential gains in efficiency and lowering of costs that may accrue through the joint provision and/or organisation of shipping services. In practice, both views may be correct — conferences may exhibit simultaneously both desirable and undesirable characteristics. In common with other types of organisation (such as companies), they may or may not promote productive efficiency and may or may not possess and/or exercise market power. Ultimately, the impact of a conference will depend largely on the intensity of competitive forces in the trade in which the conference operates and the extent to which the conference affects those forces.

Characteristics of liner shipping

In contrast to bulk shipping, where each vessel carries one commodity on a charter basis, demand for liner shipping is diverse. The costs of coordinating these diverse demands virtually rules out ship chartering as an efficient form of service delivery.[1] On the other hand, the supply of regular, scheduled liner services provides a means of reducing transactions costs so that shippers with diverse demands are able to access liner shipping services.

Liner shipping also is characterised by significant economies of scale and scope. There is general agreement regarding the existence of substantial economies of vessel size arising from economies in capital, crew and fuel costs. Though evidence

1 Freight forwarders consolidate cargoes to some degree and it is likely that computerisation will further reduce transactions costs of coordinating shippers' demands. However, it is unlikely that liner services will be replaced by charter operations.

relating to economies of fleet size is less well documented, operators of larger fleets may benefit from organisational, information technology and/or marketing economies. Larger fleet size also may lead to improved container logistics and give shipping lines greater leverage in dealing with shipyards, ship repairers and suppliers of bunker fuel. There also may be economies of scope, for example, in the sense that direct service operators offer several port combinations. In other words, they combine multiple direct services and thus serve several sub-markets within one voyage. Network economies also may be achieved if cargoes are channelled to increase traffic density on particular routes.

While the various production economies and the diverse nature of demand suggest that the liner shipping industry will display a tendency towards organisational concentration and provision of regular, scheduled services, they do not explain why conferences have been the preferred form of organisational structure, rather than, for example, a few global mega-carriers.

Economic rationale for conferences

Conferences provide for a looser form of cooperation than a single company or joint venture. Typically they are route specific and even limited to one direction on each route. Conferences may engage in joint price setting, capacity rationalisation including vessel sharing arrangements, revenue and/or cost pooling arrangements, differential pricing structures, and various forms of customer loyalty agreement.

Conferences as cartels

Many conference practices appear consistent with classical cartel or monopoly behaviour — that is, they appear to have the objective of restricting supply in order to raise prices and profits above competitive levels. However, given consistent evidence that liner shipping operators do not earn monopoly profits, alternative cartel models have been developed. For example, 'open' cartel models suggest that excess profits are dissipated as a result of a high level of service competition between conference members, leading to excess capacity and higher costs (see Meyrick & Associates, sub. 5; Brazil *et al* 1993, appendix C; Devanney *et al* 1975). However, the relevance of open cartel models for closed conferences (which are permitted on all Australian trades except those to the United States where US law prevails) appears limited. Closed conferences, by means of various internal enforcement mechanisms as well as the ability to exclude new members, are more likely to ensure that capacity is rationalised and costs minimised. More fundamentally, and whether or not excess profits are frittered away as a result of excess capacity, members of an open cartel characterised by excessive service

competition will incur higher costs than a closed, rationalised conference and will attempt to recoup such costs by charging higher freight rates. For such an outcome to be successful, market entry would have to be restricted.

Conference pricing behaviour, while complex, also may appear consistent with the existence of market power. Conferences tend to charge different rates for different commodities on the same voyage, different rates for similar commodities on different legs of a voyage, and even different rates for similar commodities on the same voyage. There also is evidence that higher rates are charged for higher-valued cargoes. If price differences do not reflect cost differences then it suggests conferences may be exploiting market power.

Much empirical research has been undertaken into whether these rate differences reflect differences in the cost of carriage or whether liner shipowners practice price discrimination. Most studies suggest that shipping conferences practice rate discrimination on the basis of cargo value.

Since price discrimination cannot occur in the economists 'ideal', perfectly competitive market, discrimination is usually taken to be *prima facie* evidence of monopoly power. However, not only is liner shipping a decreasing-cost industry but it has a major problem with the apportionment of large, non-separable, fixed costs.[2] On a given voyage, common fixed costs must be apportioned across cargoes but any such allocation necessarily will be arbitrary. In combination, these cost characteristics of liner shipping make it necessary to adopt some form of price discrimination.

A decreasing-cost industry is unable to equate price with marginal cost, since doing so will not generate sufficient revenue to cover total costs. As privately owned, profit maximising enterprises, liner shipowners must necessarily set prices above marginal costs. But this begs the question of how the necessary mark-up above marginal cost is to be determined. If liner owners charge a common mark-up for each unit of cargo carried, they run the risk of shutting out cargo that could pay its marginal cost but is unable to meet its assigned share of common costs. As Meyrick notes (Meyrick, sub. 5, p. 56), Baumol and Bradford (1970) have shown that society as a whole gains if the contribution required from each unit of cargo is proportional to the inverse elasticity of demand for the carriage of that type of cargo. This approach, commonly referred to as Ramsey pricing, is a form of price discrimination.

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2 The problem is similar to that faced by public utilities. One solution is to impose marginal cost pricing combined with a subsidy (paid for by taxpayers) to cover fixed costs. With private provision, however, fixed costs must be paid for by users in some way and price discrimination or multi-part pricing generally will be required.

In practice, pricing of slots is likely to be driven by opportunity cost — in other words, at the margin price will be determined by whether one shipper's demand for slots is competing with, or complementary to, other shippers' demands. Thus, if long-run average revenue is just adequate to cover long-run average costs, it would seem difficult to sustain the argument that such differential pricing is inefficient or uncompetitive, even though the allocation of the fixed cost 'tax' across shippers may seem somewhat arbitrary. On the other hand, if discriminatory pricing allows excess profits to be earned (or wasted), such pricing would indicate market power.[3]

Price leadership and entry-deterring games

Some critics allege that conference lines act as price leaders. That is, the market power possessed by shipping conferences enables them to set prices without reference to those charged by non-conference lines. Once the conference has determined the new level of freight rates, so the argument goes, non-conference lines tend to raise their rates so as to restore the 'normal' relationship between their own and the conference's rates.

Price leadership is a pricing strategy in an oligopolistic industry in which one firm sets the price and, either implicitly or explicitly, other firms follow its example. The fewer the number of firms in an industry (that is, the greater the number of interdependencies of output decisions among individual firms), the more effective price leadership is likely to be. Effective price leadership exists when price movements initiated by the leader have a high probability of sticking and there are no maverick or non-conforming firms.

Whilst price leadership may have been a feature of liner shipping prior to containerisation, the intensity of competition in today's liner trades suggests that the model is no longer applicable. The Commission's case studies (see appendix G) suggest that while shipping lines are forced to lower freight rates in trades in which substantial over-capacity exists, rate restoration has proved difficult to implement. Some lines refuse to raise rates in order to build trade share and rate restoration programs also tend to encourage entry.

An alternative view is that the price competition observable in today's market place stems from the interaction of competitive strategies adopted by conference and non-conference lines. Amongst the several models developed to explain strategic behaviour, that of Stackelberg-Spencer-Dixit appears relevant to liner shipping. The

[3] It would not necessarily imply global resource inefficiency, however, if price discrimination were Ramsey 'optimal'. But from Australia's perspective as a user of shipping rather than a provider, low prices are the objective, not global allocative efficiency *per se*.

original Stackelberg model of a two-firm industry focuses on non-price competition, assuming that in the first period, incumbent Firm 1 chooses a level of capacity (K_1), which is then fixed. Firm 2, a potential entrant, observes K_1 before choosing its own level of capacity, K_2. While the incumbent firm cannot deter entry, it can attain a higher profit level by limiting the scale of entry of the potential entrant.

In the Stackelberg-Spencer-Dixit model, rivalry in the second period may take the form of either price or non-price competition. Assuming price competition prevails, the adoption of a lower price by Firm 1 forces a matching price cut by Firm 2, which (in turn) lowers the profitability of Firm 1. However, Firm 1's pricing and investment strategy will differ according to whether it wants to deter or accommodate its rival. An aggressive pricing and investment strategy by Firm 1 may hurt Firm 2 immediately, but lead Firm 2 to adopt a tougher stance in succeeding rounds. A less aggressive pricing and investment stance may enable Firm 1 to hold but not increase its market share. (Tirole 1988, pp. 314–37)

If competition takes a non-price form, the decision by Firm 1 to expand output implies a lower equilibrium output for Firm 2. In this situation, Firm 1 will choose to invest aggressively — being rough hurts Firm 2 and softens it up for future rounds.

The Stackelberg-Spencer-Dixit model mimics many of the strategic decisions observable in liner shipping markets. However, the model deals only with a two-firm world and it does not explain persistent over-capacity in the liner shipping market. In other words, while liner carriers doubtless attempt to second-guess the decisions of competitors and potential competitors, and adopt strategies designed to scare off rivals, whether they succeed will be a function of the strength of (potential) competition. In liner shipping markets, conferences face competition from many actual and potential rivals. Moreover, that firms continually vie with one another to improve their market position is the engine of dynamic markets and will work to the advantage of shippers provided liner trades are open to new entry.

Conferences as efficient providers

Traditional arguments supporting the conference structure are based on a view that competition will be 'destructive' in the sense of leading to prices below costs (in other words, marginal cost pricing is inappropriate where large fixed costs must be recovered) and thus generate market instability. Developments in game theory have added some weight to this view (see Telser 1987; McWilliams 1990; Pirrong 1992; Sjostrom 1988, 1989, 1992; Meyrick & Associates, sub. 5).

The 'theory of the core' suggests that industries characterised by uncertain and/or periodic demand, large plant capacities relative to demand, increasing returns to scale, fixed plant capacity, avoidable fixed costs and costly or zero storage, may have no stable, competitive equilibrium. The essence of the problem is that if suppliers with optimal-sized (large) plants compete there may be excess capacity and prices too low to cover costs. In other words, competition would lead to instability with optimal-size low-cost plants. Under these conditions, some form of industry coordination or concentration is necessary to generate an efficient equilibrium.

Shippers ideally want fast, reliable shipping services on demand. However, few shippers have sufficient demand to charter an entire vessel. The provision of a regular 'bus service' is a way of accommodating shippers' diverse demands for frequency, reliability etc. while allowing various production economies to be captured by carriers. However, a single shipping line may be loath to commit several vessels (and incur correspondingly large fixed costs) in order to provide a regular scheduled service where demand is uncertain and where that uncertainty is exacerbated by the possibility of rivals encroaching on the trade.[4] In order to reduce this risk, the operator may commit smaller vessels, reduce sailing frequency and/or contract directly with shippers. But smaller ships mean higher costs, reduced service frequency imposes additional costs on shippers, while contracting with many small shippers also is likely to be very costly.[5] Cooperation with potential rivals offers an alternative way of reducing demand uncertainty. A lower risk premium will mean that larger ships can be utilised (thus capturing economies of scale) while a large conference fleet may generate additional economies while providing the coordinated scheduling valued by shippers. In this sense, conferences can provide an efficient mode of service delivery. It is feasible, of course, that conferences serve to generate a stable equilibrium but simultaneously give member lines market power. This possibility is discussed below.

Conferences in practice — 'open' vs 'closed' conferences

There has been considerable debate over the relative merits of open and closed conferences. In general, closed conferences are associated with higher levels of technical efficiency, while open conferences are said to offer superior allocative efficiency. As noted in chapter 3, cooperation and rationalisation by means of a closed conference may provide desirable outcomes for shippers. A lower risk

4 In this sense, conferences may form in response to the *absence* of restrictions on entry to liner shipping markets.

5 Thus there may a stable equilibrium in the absence of cooperation but that equilibrium may prove prohibitively costly for many consumers.

premium may mean the employment of larger vessels operating at high load factors (thus capturing economies of vessel size), while a large conference fleet may not only reap additional economies but provide the coordinated schedules valued by shippers. However, under certain circumstances closed conferences may be able to exploit shippers by charging monopolistic prices.

In contrast, open conferences allow existing members to expand capacity at will and allow new firms to enter the conference freely. Under such conditions, as the Department of the Treasury infers (sub. DR35, p. 14), excess profits will be dissipated. However, this seemingly positive feature may arise as a result of a negative tendency — the existence of open cartels may give rise to excess capacity and higher costs (Meyrick & Associates, sub. 5, pp. 30–36; Brazil *et al* 1993, appendix C, pp. 39–47). Several open cartel models have been developed in an attempt to explain the mechanism underlying this tendency.

Devanney, Livanos and Stewart (Devanney *et al* 1975) were the first to develop a formal open cartel model applied to liner shipping. The conference initially acts as a collusive oligopoly, restricting capacity and setting freight rates above average cost. With prices fixed, lines compete on a service rather than a price basis. Competition between lines for market share leads to increased service frequency, giving rise to over-tonnaging, increased costs and higher freight rates. As Meyrick notes, the process is 'ratchet' like, with higher rates encouraging further over capacity and yet higher rates in a further round (Meyrick & Associates, sub. 5, p. 31). As described, the process is inherently unstable. Were it to continue, it would pay an independent operator, with lower costs, to enter the market.

Jansson and Shneerson's model (Jansson and Shneerson 1978) shares some common features with Devanney. Firms, assumed to be members of an open conference, have the ability to operate additional voyages and/or additional vessels in a given trade. However, assuming the total volume of cargo in the trade is fixed, increasing the number of vessels and/or voyages serves only to lower load factors. Jansson and Shneerson assume that this process continues until equilibrium is reached where the marginal revenue accruing from an additional sailing equals marginal cost. In the Jansson and Shneerson model, cargo liners attempt to fill their surplus capacity with tramp cargo — any cargo paying a freight rate above direct handling costs is worth carrying. Under these assumptions, inefficiency may not appear in the guise of low load factors, but may instead be associated with the carriage of relatively low paying cargo and/or the employment of smaller ships than might used by a closed conference.

There is then broad agreement as to the mechanism leading to excess capacity and rising costs. In an open cartel, in which prices initially are fixed at levels above costs by cartel members, the entry of new firms and expansion of capacity by firms within

the cartel are freely permitted. Service competition leads to overtonnaging, increased costs and higher freight rates. While a closed conference is able to control service competition and rationalise fleet operation, an open conference is unable to exert the required discipline. According to Devanney *et al* (1975), the degree of excess capacity will vary inversely with the discipline able to be exerted by a conference:

> A conference which practices control over scheduling is likely to be more efficient than one that does not; one that practices cargo pooling still more efficient; and one that practices revenue pooling more efficient yet. In short, the closer the conference becomes to a single company, the more efficient (in a technical sense) it is likely to be. (Devanney *et al* 1975, p. 162)

In summary, open conferences are likely to suffer from overtonnaging, leading to higher costs and pressure for increased freight rates. Closed conferences are more likely to generate cost-savings through cooperation between carriers, but may exhibit less internal competition. In such a case, it is necessary to rely on competition from existing non-conference carriers, potential entrants, transhipment operators, and the countervailing power of shippers to ensure that the cost savings are passed on to shippers as lower rates or more frequent or regular services.

Conferences in practice — market contestability

The key to the role of conferences in practice is whether they face actual or potential competition. In other words, to what degree are they constrained to charge prices which do not yield persistent excess profits and to operate efficiently? Evidence of competition and contestability on Australian trades is discussed in chapter 6. This section briefly discusses some aspects of contestability.

There is a range of views about the fundamental contestability of liner shipping markets (see BTE 1986a and 1986b; Trace 1985; Meyrick & Associates, sub. 5; Brazil *et al* 1993, appendix C). Unlike aviation markets where bilateral agreements restrict landing rights and market entry, there are few regulatory or institutional constraints on entry to line shipping markets.[6] Thus any significant entry restrictions in liner shipping must derive from economic characteristics of liner shipping itself.

Liner shipping markets clearly are not perfectly competitive but provided they are contestable, conferences will be constrained to operate and price efficiently over the long-term. *Perfect* contestability requires no restrictions on access to technology, zero sunk costs, and no scope for the incumbent to change pricing behaviour in response to competition. There do not appear to be any artificial constraints on

6 Some developing countries have sought to impose national flag cargo reservation schemes.

access to shipping technology while sunk costs incurred on particular trade routes may be quite low. Provided ships are not trade-specific they can be deployed elsewhere. There may be other forms of sunk costs including marketing costs and reputation. The incumbent (conference) may have an advantage due to economies of scale or consumer loyalty, however, which could deter a potential rival. For this reason in particular it generally is agreed that liner shipping markets are not *perfectly* contestable.

But lack of perfect contestability does not imply that barriers to entry to a particular trade are prohibitive or even significant. The conference mechanism allows members to capture various economies in the provision of a comprehensive, coordinated service. While conferences may not be especially vulnerable to competition across their entire activity, they may be vulnerable to rivals competing in sub-markets. In other words, rivals can target certain services or markets, operating on a smaller scale than the conference and incurring comparatively low entry costs, thus making it more difficult for the conference to retaliate.

Over time, increasing demand will increase the scope for further competition while changes in technology may erode the need for conferences. For example, computer technology may reduce the transaction costs involved in contracting between shippers and shipping operators (or promote freight forwarding activities) and thus reduce demand uncertainty. Transhipping directly exploits network economies together with economies of scale and thus may provide shipping services at lower cost than direct services by conferences. In addition, scope for conference members to 'cheat' may be an important competitive constraint on conference market power.

The extent of market contestability and the intensity of competitive forces ultimately must be an empirical matter. Nonetheless, the fact that conferences are ubiquitous in liner shipping and that they have persisted for over a century despite massive market expansion, technological change (especially containerisation) and the absence of significant barriers to entry suggest that they are more than monopoly cartels. Indeed, in the absence of regulatory barriers to entry, any entry restrictions must derive from the incumbency advantage of conferences themselves. In other words, any market power of conferences must derive from the cost savings they generate. This suggests that removal of conferences to eliminate market power inevitably will incur an efficiency cost.

B.2 Shipping services and the public interest

The ultimate objective of any regulatory intervention should be to enhance the national interest. This section asks where the public interest lies in the case of

international liner shipping. Though there can be little doubt that Australian economic welfare as a whole is improved by cheaper international liner cargo shipping, as explained below, not all members of the community are likely to gain.

Australia is not, and never has been, a large supplier of international liner shipping services. Though a small Australian flag liner fleet (ANLCL) continues to operate, it is now foreign-owned. While the interests of Australian employees must be taken into account in the welfare calculus, the point is made that Australia is not a major exporter of shipping services. Put another way, Australia relies almost entirely on foreign liner shipping providers to carry its non-bulk imports and exports (see chapter 2 for details of major commodity cargoes).

Shipping costs affect prices of exports and imports in the same way as trade taxes, driving a wedge between producer and consumer prices. (Of course, unlike trade taxes, transport costs represent an essential service input.) An across-the-board reduction in the cost of international liner shipping services will result in a fall in the landed price of liner imports and an expansion in the volume of those imports.[7] There are some exceptions — for example, the case where Australia's demand for imports is perfectly elastic (where imports expand but there is no price change)[8] or, where the supply of imports is fixed (for example, because imports are subject to a quota). Typically the price of the imported good will not fall by the full amount of the transport saving — the saving will be shared between seller and buyer, the distribution being a function of relative supply and demand elasticities. In the limiting but improbable case where Australia's demand for imports were fixed, it could capture the entire saving.

There is a similar story for the export side. Lower transport costs for Australian exports generally will be shared between Australian producers (higher producer prices and exports) and foreign buyers (lower import prices and expanded imports), with the relative price effects being a function of relative demand and supply elasticities. As in the case of imports, there are special cases where one country may capture the whole saving — if Australian export supply is fixed (by quotas imposed by the importing country, for example), producer prices can rise by the full amount of the freight saving though, of course, there can be no expansion in exports.

7 The discussion here is based on an assumed reduction in freight rates. More timely delivery or better service levels which improve the competitiveness of imports or Australian exports will have similar effects.

8 Though it is implausible that Australia's demand for an import is perfectly elastic, it may be the case that its demand for the import from one source is highly elastic. In this case, a single exporter could capture a transport saving on one route.

The net national gain is measured by the net gains in producer and consumer surplus which flow from cheaper imports and higher returns to Australian producers of exports. The impact of lower shipping costs thus is akin to the broad impact of a terms of trade gain which improves the relative price of exports *vis-à-vis* imports.

Though there will be net national benefits, higher national income coupled with higher export producer returns and cheaper imports will generate structural shifts in the economy. For example, cheaper imports and higher income and national spending will lead to higher imports and lower domestic production of the import-competing product. At the same time, higher rewards for export producers will encourage an expansion in the production of exports. Exports are likely to increase, though it is possible that higher national income and spending mean that, on balance, more export production is consumed at home so that exports decline.[9]

Any expansion of trade also is likely to generate additional dynamic gains by encouraging more efficient local production and management processes. There may be additional gains if increased import competition reduces market power of domestic firms.

Shippers and the public interest

Australian shippers, as profit maximisers, have a clear interest in obtaining high quality shipping services at the lowest possible price. Even if the shipper is a foreign-owned intermediary (for example, a multinational trader), as long as there is competition between export traders and competition in markets for importables, lower shipping costs will be passed on to domestic export producers and domestic consumers of imports. This implies that there is a coincidence between shippers' interests and the national interest in relation to international liner shipping outcomes. In other words, shippers' interests in relation to international liner shipping act as a close proxy for the national interest.

It is possible that, for example, a statutory marketing authority with monopoly selling powers may not act to maximise profits of commodity exporters. This would be more likely to occur where the marketing arrangements allowed monopoly prices to be charged in the domestic market. Higher returns from the domestic market could be dissipated to some extent if the authority pursued an 'easy' life and did not bargain for the best shipping deal. In other words, the shipper in these circumstances may not act to maximise profits. But generally-speaking, exporters and importers

9 This does not imply any deterioration in the trade balance. An improvement in the terms of trade (or a reduction in imported shipping costs) means that fewer exports need to be sold to pay for a given volume of imports.

will go out of business if they fail to maximise profits and few commodities covered by compulsory marketing use liner shipping (except perhaps rice). Moreover, most controls over domestic commodity markets have been abolished.

B.3 Countervailing power

Australia is a net importer of international liner shipping services — indeed, it relies almost entirely on foreign liner shipping services. As discussed above, it is in the interests of Australian exporters and consumers of imports to obtain efficient service levels for competitive prices. Discussion in this section focuses on what Australia feasibly can do to promote this outcome.

Standard trade theory suggests that where a country buying an imported good has some market power, appropriately levied import restrictions (such as tariffs and quotas) may improve national income by forcing the foreign supplier to reduce the selling price. A similar outcome could be achieved by a private importer with market power. If the country (or importer) has little or no market power (that is, it is a price taker) any attempt to push down the import price by controlling imports will back-fire — the quantity consumed will fall but the price will remain unchanged. Moreover, even where the country has some market power, if the import control is too restrictive (in the limit, for example, an import prohibition), the costs of the intervention in terms of reduced consumption are likely to exceed any benefit from lower prices.

If the foreign supplier exercises market power, restricting the quantity sold in order to increase the price, the importing country (or importer) may be able to constrain such behaviour and obtain a better outcome. This will depend on the degree to which the foreign supplier segments markets. If the foreign supplier has many other potential customers (where market power also is exercised), an attempt by Australia to force a lower price may encourage the foreign supplier to divert supplies to other relatively more profitable markets. If, on the other hand, the Australian market yields excess profits, there may be scope for retaliatory action. Such intervention could be exercised by Australian buyers acting in concert to exercise countervailing power or by strategic regulatory intervention to set an appropriate tariff or price cap. As with any strategic trade intervention, however, putting the theory into practice is extremely difficult and risky (see IAC 1989b, pp. 79–86).

In the case of international liner shipping, the product is a service which requires the providers physically to come to Australia — the production and consumption of the shipping service cannot be separated. This opens up the possibility of limiting entry of (some of) these providers (similar to a restriction, indeed an embargo, on imports

of goods) and also may open scope for application of domestic laws including competition law because providers enter Australian territory, and may establish a local presence. The latter possibility means that Australia potentially could affect the market structure of the foreign service provider, an option that normally is not available with respect to foreign-produced goods.[10]

The question then arises as to whether application of competition law is an appropriate response to shipping conferences. Application of competition law in order to proscribe formation of conferences might reduce any market power of the conference but also deny a source of potential benefit to Australian shippers. Where cost savings from the existence of conferences are zero or very small — and small relative to losses arising from market power — the case for dismantling conferences is strengthened. Where conferences promote significant cost savings, the case for their proscription is weakened. However, whether or not constraining conference activity appears sensible, if Australia has little market power in liner shipping markets, its ability to constrain foreign practices without harming Australian shippers may be limited. For example, imposition of costs on conference members (for example, via fines) may result in reduced service levels to Australian shippers without compensating reductions in price.

Collective action by shippers

If Australian shippers negotiate in concert their negotiating position will be strengthened and, on average, they may obtain lower shipping rates. It is this reasoning which underpins the exemption of shipper groups under Part X. However, exporters have different shipping requirements and collective action is unlikely to be able to accommodate these differences. For example, larger shippers may possess sufficient market strength to negotiate a better deal outside a collective agreement. The corollary is that they are likely to cross-subsidise smaller or more remote exporters under a system of collective rate negotiation. Thus collective bargaining could lead to inefficient price signalling and resource misallocation within Australia.

However, if collective action is not compulsory, such inefficiencies should be minimised. For example, under Part X, individual shippers are not prevented from negotiating agreements with individual shipping operators and, it appears, more and more are doing so. To the extent that collective action is used, it is to negotiate common, core service requirements. Together with the opportunity for any shipper to use non-conference services, it is unlikely that any shipper is forced to consume a

10 In the case of foreign-produced goods, traded at arms length, questions of application of competition policy usually are determined by the relevant foreign government.

service unsuited to his/her requirements or misses out because of lack of choice. That said, however, the liner shipping market is like virtually all other markets in that consumers are offered ‘ready-made’ products at much lower prices than customised products.

C Australia's sea-freight task

The data presented in this appendix are from the Bureau of Transport Economics International Cargo Statistics database. The data are based on ABS trade statistics which have been extended to include vessels details, and are available quarterly.

The database contains data from two different ABS data collections. A series break exists prior to the June–September quarter of 1994, therefore data before 1994-95 cannot be compared in absolute terms to data from 1994-95 onward (ABS pers. comm., 19 March 1999). However, the series break does not appear to have affected shares. Data relating to absolute weights and values of liner trade are therefore presented in this appendix annually for the period 1994-95 to 1997-98 only. Data relating to shares of liner trade are presented biannually from 1989-90 to 1997-98.

It should also be noted that the data presented in this appendix include exports and imports which are loaded and unloaded at Australian regional ports (non-capital city ports). A significant proportion of cargo loaded/unloaded at regional ports is likely to be carried by charter or company-owned vessels, which are not liner services as defined in this inquiry, in the sense that they are not regular scheduled services operating to set timetables, even though these vessels are identified as liner vessels in the database. It is not possible to identify precisely cargo carried on charter or company-owned vessels, and therefore also not possible to exclude these cargoes from the data presented in this appendix.

Countries comprising each of the trade regions for which data in this appendix are presented are listed in table C.23.

C.1 Liner trade by commodity group

Table C.1 **Liner exports by commodity group, 1994-95 to 1997-98 (tonnes)**

Commodity group	*1994-95*	*1995-96*	*1996-97*	*1997-98*
Confidential	1 943 226	1 978 260	2 351 691	2 936 504
Meat and meat preparations	1 002 564	993 121	983 713	1 210 547
Iron and steel	806 699	952 088	1 188 279	993 467
Vegetables and fruit	576 179	636 345	817 521	940 237
Dairy products and birds eggs	563 097	572 464	670 243	725 548
Feeding stuff for animals	525 636	622 084	739 260	738 785
Chemicals	466 798	595 679	597 047	636 728
Aluminium and aluminium alloys	462 620	601 795	831 382	1 118 318
Cereals and cereal preparations	405 051	503 221	1 030 810	1 379 701
Other	4 673 038	5 616 873	6 680 061	7 551 712
Total	**11 424 908**	**13 071 930**	**15 890 007**	**18 231 547**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.2 **Liner imports by commodity group, 1994-95 to 1997-98 (tonnes)**

Commodity group	*1994-95*	*1995-96*	*1996-97*	*1997-98*
Paper, paperboard and articles of paper	1 047 397	1 026 409	1 070 523	1 361 439
Chemicals	843 226	896 363	991 335	1 172 877
Machinery	830 610	917 607	926 584	1 137 590
Confidential	681 024	549 902	588 225	519 001
Non-metallic mineral manufactures, nes[a]	676 064	615 612	703 866	883 852
Miscellaneous manufactured articles	607 627	663 124	702 298	783 736
Iron and steel	593 301	551 824	688 069	928 614
Cork and wood	467 740	448 461	435 492	491 070
Vegetables and fruit	387 857	332 592	333 829	370 405
Other	3 410 911	3 324 029	3 792 269	4 427 561
Total	**9 545 757**	**9 325 923**	**10 232 490**	**12 076 145**

a Not elsewhere specified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.3 **Liner exports by commodity group, 1994-95 to 1997-98 ($'000)**

	1994-95	*1995-96*	*1996-97*	*1997-98*
Wool, sheep and lambs	3 227 389	2 644 912	2 675 331	3 225 171
Meat and meat preparations	3 149 371	2 836 992	2 509 411	3 417 754
Machinery	2 271 141	2 629 641	2 962 825	3 055 564
Confidential	2 263 539	2 629 510	2 812 544	3 704 509
Dairy products and birds eggs	1 217 536	1 475 982	1 562 164	1 805 178
Aluminium and aluminium alloys	1 185 618	1 507 864	1 767 422	2 715 741
Chemicals	1 073 580	1 294 381	1 343 054	1 522 138
Road vehicles and transport equipment	893 603	1 085 785	1 105 065	1 245 368
Cotton	605 495	677 563	1 009 478	1 356 851
Other	8 329 565	9 650 540	10 433 858	11 500 361
Total	**24 216 837**	**26 433 170**	**28 181 152**	**33 548 635**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.4 **Liner imports by commodity group, 1994-95 to 1997-98 ($'000)**

	1994-95	*1995-96*	*1996-97*	*1997-98*
Machinery	11 497 014	12 521 149	12 076 100	14 896 419
Miscellaneous manufactured articles	4 109 608	4 439 380	4 501 613	5 498 060
Chemicals	2 562 695	2 895 799	2 940 455	3 775 947
Confidential	1 846 638	1 762 123	1 916 021	1 555 790
Textile yarn, fabrics, made-up articles	1 842 496	1 772 140	1 680 384	1 968 697
Road vehicles and transport equipment	1 829 585	2 225 168	2 310 570	3 158 979
Paper, paperboard and articles of paper	1 367 526	1 627 338	1 445 045	1 845 581
Manufactures of metals, nes[a]	1 282 190	1 360 096	1 319 311	1 724 747
Articles of apparel, clothing accessories	1 119 849	1 198 418	1 237 670	1 613 173
Other	8 659 999	9 092 880	8 951 311	11 291 482
Total	**36 117 600**	**38 894 491**	**38 378 480**	**47 328 875**

a Not elsewhere specified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

C.2 Conference trade by commodity group

Table C.5 **Conference share of liner export tonnage for selected commodity groups, 1989-90 to 1997-98 (per cent)**

	1989-90	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Meat and meat preparations	81	70	75	75	74
Iron and steel	51	46	67	51	29
Vegetables and fruit	59	69	65	55	51
Dairy products and birds eggs	70	62	63	61	63
Feeding stuff for animals	62	57	64	59	63
Chemicals	60	58	67	42	41
Aluminium and aluminium alloys	66	62	52	52	28
Cereals and cereal preparations	53	49	63	62	39
Wool, sheep and lambs	64	56	56	68	64
Machinery	76	76	71	52	62
Road vehicles and transport equipment	86	79	58	74	65
Cotton	54	44	49	59	63
Total	**64**	**56**	**56**	**54**	**45**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.6 **Conference share of liner import tonnage for selected commodity groups, 1989-90 to 1997-98 (per cent)**

	1989-90	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Paper, paperboard and articles of paper	53	51	59	46	50
Chemicals	67	61	61	60	59
Machinery	71	67	65	65	58
Non-metallic mineral manufactures, nes[a]	66	60	60	60	58
Miscellaneous manufactured articles	75	67	60	67	62
Iron and steel	73	58	60	32	25
Cork and wood	45	50	51	37	47
Vegetables and fruit	52	48	50	58	64
Textile yarn, fabrics, made-up articles	66	68	68	74	72
Road vehicles and transport equipment	75	67	70	62	66
Manufactures of metals, nes[a]	75	56	57	65	66
Articles of apparel and clothing accessories	54	29	42	40	39
Total	**64**	**59**	**59**	**56**	**54**

a Not elsewhere specified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

C.3 Liner trade by trade region

Table C.7 **Liner exports by trade region, 1994-95 to 1997-98 (tonnes)**

Trade region	*1994-95*	*1995-96*	*1996-97*	*1997-98*
Africa	185 276	240 949	333 387	357 100
Central America & Caribbean	7 980	36 961	11 209	61 773
East Asia	2 057 960	2 482 418	3 049 130	3 554 003
East India	87 216	90 474	260 520	325 129
Europe – Atlantic	624 604	807 133	694 288	1 022 327
Europe – Baltic	21 234	22 792	17 068	46 491
Europe – Mediterranean	259 400	344 697	291 549	552 369
Japan & North Asia	2 855 056	3 017 906	3 871 587	4 181 550
Middle East Gulf	165 388	148 749	295 414	386 920
New Zealand	828 080	952 914	1 089 309	1 226 090
No Trade Area[a]	10	76	11	42 261
North America – East Coast	591 704	619 054	514 438	588 358
North America – West Coast	405 926	375 398	609 963	714 582
Pacific Islands & Other	353 991	371 250	363 503	380 444
Papua New Guinea & Solomon Islands	374 138	522 076	647 473	630 966
Red Sea & Mediterranean Middle East	115 712	107 629	119 311	127 921
South America	81 685	46 663	65 363	76 823
South-East Asia	2 208 368	2 658 979	3 322 531	3 584 569
West India	201 181	225 820	333 962	371 876
Total	**11 424 909**	**13 071 938**	**15 890 016**	**18 231 552**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.8 **Liner imports by trade region, 1994-95 to 1997-98 (tonnes)**

Trade region	*1994-95*	*1995-96*	*1996-97*	*1997-98*
Africa	163 451	216 408	244 462	278 589
Central America & Caribbean	3 647	11 632	5 323	5 174
East Asia	1 261 687	1 243 886	1 410 457	1 588 433
East India	68 384	54 461	115 983	95 479
Europe – Atlantic	1 395 320	1 413 420	1 408 989	1 867 924
Europe – Baltic	258 218	179 904	135 476	177 638
Europe – Mediterranean	652 222	657 107	719 828	909 490
Japan & North Asia	1 002 400	916 241	1 025 280	1 193 513
Middle East Gulf	100 231	23 221	35 432	77 392
New Zealand	1 318 977	1 157 298	1 156 796	1 296 379
No Trade Area[a]	259	424	587	555
North America – East Coast	655 777	757 885	905 825	959 075
North America – West Coast	796 228	1 034 635	1 145 126	1 165 818
Pacific Islands & Other	41851	42 254	41 062	56 834
Papua New Guinea & Solomon Islands	271 187	60 750	94 529	82 134
Red Sea & Mediterranean Middle East	60 284	48 302	56 497	89 485
South America	236 828	239 024	206 198	220 575
South-East Asia	1 154 742	1 166 363	1 406 459	1 817 367
West India	104 062	102 695	118 187	194 295
Total	**9 545 755**	**9 325 910**	**10 232 496**	**12 076 149**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.9 **Liner exports by trade region, 1994-95 to 1997-98 ($'000)**

Trade region	*1994-95*	*1995-96*	*1996-97*	*1997-98*
Africa	388 629	483 140	605 716	791 659
Central America & Caribbean	18 591	22 081	27 330	199 395
East Asia	493 128	4 693 717	5 225 272	5 635 245
East India	117 351	146 453	201 825	241 991
Europe – Atlantic	1 906 772	2 359 821	2 172 524	3 066 490
Europe – Baltic	54 596	55 557	49 859	114 765
Europe – Mediterranean	1 097 783	1 211 747	1 081 606	1 791 107
Japan & North Asia	5 979 925	5 793 462	5 816 834	6 942 019
Middle East Gulf	266 793	262 116	333 969	439 252
New Zealand	2 101 715	2 378 425	2 644 195	2 765 198
No Trade Area[a]	103	79	23	12 009
North America – East Coast	1 220 615	1 267 665	965 938	1 600 805
North America – West Coast	1 009 407	1 019 560	1 303 591	1 920 293
Pacific Islands & Other	432 390	492 179	486 181	566 672
Papua New Guinea & Solomon Islands	515 707	672 429	958 999	893 584
Red Sea & Mediterranean Middle East	147 496	173 105	157 598	196 243
South America	129 634	112 031	140 473	243 586
South-East Asia	4 024 547	4 924 559	5 658 499	5 703 254
West India	311 662	365 042	350 717	425 069
Total	**20 216 844**	**26 433 168**	**28 181 149**	**33 548 636**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.10 **Liner imports by trade region, 1994-95 to 1997-98 ($'000)**

Trade region	*1994-95*	*1995-96*	*1996-97*	*1997-98*
Africa	221 958	341 299	346 210	433 600
Central America & Caribbean	68 292	70 933	20 200	25 767
East Asia	5 739 814	5 788 825	6 196 098	7 475 418
East India	138 732	120 883	145 467	172 185
Europe – Atlantic	7 273 146	7 834 707	6 791 390	9 330 399
Europe – Baltic	732 268	687 710	479 815	675 014
Europe – Mediterranean	1872 986	2 165 284	2 107 852	2 728 861
Japan & North Asia	6 411 559	6 128 722	6 097 566	6 827 748
Middle East Gulf	53 335	39 029	54 657	84 117
New Zealand	2 140 454	2 189 475	2 208 372	2 466 117
No Trade Area[a]	1 112	2 022	2 511	2 438
North America – East Coast	2 992 871	3 310 318	3 107 924	3 958 551
North America – West Coast	3 596 762	5 072 956	5 112 672	6 111 458
Pacific Islands & Other	127 044	151 584	159 108	187 312
Papua New Guinea & Solomon Islands	208 962	149 464	99 535	136 607
Red Sea & Mediterranean Middle East	130 041	116 125	138 050	176 148
South America	347 859	355 116	325 016	438 748
South-East Asia	3 727 843	4 025 818	4 587 420	5 596 937
West India	332 556	344 218	398 621	501 456
Total	**36 117 594**	**38 894 488**	**38 378 484**	**47 328 881**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

C.4 Conference trade by trade region

Table C.11 **Conference share of liner export tonnage by trade region, 1989-90 to 1997-98 (per cent)**

Country/region	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	8	77	97	9	22
Central America & Caribbean	27	94	82	96	36
East Asia	64	39	32	36	28
East India	54	76	56	75	35
Europe – Atlantic	54	60	59	53	44
Europe – Baltic	32	48	29	28	50
Europe – Mediterranean	78	64	82	58	54
Japan & North Asia	68	48	48	57	48
Middle East Gulf	49	81	46	93	47
New Zealand	74	88	78	53	65
North America – East Coast	48	49	50	36	53
North America – West Coast	47	33	29	54	40
Pacific Islands & Other	65	72	51	47	50
Papua New Guinea & Solomon Islands	87	77	67	74	60
Red Sea & Mediterranean Middle East	31	57	69	65	68
South America	38	26	40	17	21
South-East Asia	76	65	70	69	48
West India	58	66	70	72	50
Total	**64**	**56**	**56**	**54**	**45**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.12 **Conference share of liner import tonnage by trade region, 1989-90 to 1997-98 (per cent)**

Country/region	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	52	53	66	9	8
Central America & Caribbean	77	80	60	33	87
East Asia	63	31	37	48	48
East India	76	83	83	87	81
Europe – Atlantic	67	72	67	53	55
Europe – Baltic	90	86	84	74	15
Europe – Mediterranean	75	65	64	64	60
Japan & North Asia	60	48	55	59	61
Middle East Gulf	93	88	87	84	33
New Zealand	51	56	55	48	61
North America – East Coast	69	63	62	59	43
North America – West Coast	53	41	39	54	55
Pacific Islands & Other	21	40	31	66	47
Papua New Guinea & Solomon Islands	88	92	97	76	64
Red Sea & Mediterranean Middle East	17	3	7	36	39
South America	26	69	61	18	19
South-East Asia	85	70	74	79	67
West India	71	75	82	92	60
Total	**64**	**59**	**59**	**56**	**54**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.13 **Conference share of liner export value by trade region, 1989-90 to 1997-98 (per cent)**

Country/region	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	19	83	95	12	17
Central America & Caribbean	62	89	80	86	36
East Asia	73	40	41	39	36
East India	71	85	55	85	64
Europe – Atlantic	64	80	74	51	47
Europe – Baltic	67	66	46	31	55
Europe – Mediterranean	82	80	87	64	59
Japan & North Asia	75	62	68	71	63
Middle East Gulf	52	84	71	96	76
New Zealand	71	92	74	63	72
North America – East Coast	74	65	69	53	59
North America – West Coast	73	60	55	73	66
Pacific Islands & Other	56	59	22	46	52
Papua New Guinea & Solomon Islands	80	81	72	59	52
Red Sea & Mediterranean Middle East	59	68	77	78	76
South America	42	62	62	16	23
South-East Asia	80	69	72	74	63
West India	55	70	64	81	68
Total	**73**	**67**	**67**	**60**	**56**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.14 **Conference share of liner import value by trade region, 1989-90 to 1997-98 (per cent)**

Country/region	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	52	67	71	13	12
Central America & Caribbean	73	44	29	94	95
East Asia	65	31	34	49	45
East India	74	82	83	90	83
Europe – Atlantic	76	77	68	68	66
Europe – Baltic	89	88	86	77	26
Europe – Mediterranean	70	61	60	75	72
Japan & North Asia	77	61	77	77	83
Middle East Gulf	74	88	74	81	52
New Zealand	52	76	73	56	62
North America – East Coast	83	77	82	67	50
North America – West Coast	69	67	58	72	70
Pacific Islands & Other	40	59	28	69	63
Papua New Guinea & Solomon Islands	88	93	95	48	65
Red Sea & Mediterranean Middle East	14	2	5	28	67
South America	30	75	74	26	24
South-East Asia	82	70	74	80	69
West India	73	79	80	92	83
Total	**73**	**66**	**67**	**67**	**64**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

C.5 Transhipment

Two sets of transhipment data are presented in this appendix. Tables C.15 and C.16 include only cargo that is transhipped in a different trade region from its region of origin or destination. For example, export cargoes bound for Europe which are transhipped in South-East Asia are included in the transhipment data presented here. However, export cargo destined for Europe that is transhipped in Europe is not included, nor is import cargo from East Asia that is transhipped in East Asia. The available data do not differentiate between transhipment and landbridging. Data on transhipment and landbridging within trade regions have therefore been excluded from the data presented in tables C.15 and C.16 in an attempt to identify transhipment services competing with direct services on Australia's major trade routes. Data presented in these two tables represent a lower bound to the total level of transhipment of Australian cargoes. This is in contrast to transhipment data presented in Brazil *et al* (1993), which include all transhipped cargoes, including those transhipped in the region of origin or destination.

Data presented in tables C.17 and C.18 include all cargo transhipped or landbridged, including cargo transhipped or landbridged in the region of origin or destination.

Data presented in these two tables represent an upper bound as far as official statistics are concerned to the total level of transhipment of Australian cargoes.

Table C.15 **Share of total liner export tonnage transhipped by region of transhipment, 1989-90 to 1997-98 (per cent)**

Excluding cargo transhipped within the region of destination

Country/region of transhipment	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	0.01	0.02	0.03	0.18	0.25
Latin America	0.03	0.07	0.01	0.02	0.03
East Asia	0.16	0.30	0.10	0.27	0.26
India	0.01	0.03	0.01	0.04	0.04
Europe	0.22	0.08	0.10	0.16	0.10
Japan & North Asia	0.12	0.08	0.10	0.06	0.28
Middle East Gulf	0.00	0.01	0.00	0.00	0.01
New Zealand	0.09	0.01	0.01	0.01	0.01
No Trade Area[a]	0.99	0.00	0.00	0.00	0.23
North America	0.05	0.06	0.06	0.05	0.15
Papua New Guinea & Pacific Islands	0.47	0.01	0.03	0.01	0.01
Red Sea & Mediterranean Middle East	0.25	0.03	0.02	0.02	0.01
South-East Asia	0.13	0.29	0.89	1.29	1.82
Total	**2.53**	**1.00**	**1.36**	**2.14**	**2.98**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.16 **Share of total liner import tonnage transhipped by region of transhipment, 1989-90 to 1997-98 (per cent)**

Excluding cargo transhipped within the region of origin

Country/region of transhipment	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	0.12	0.09	0.06	0.13	0.08
Latin America	0.08	0.05	0.02	0.02	0.05
East Asia	0.29	0.12	0.09	0.41	0.36
India	0.01	0.01	0.00	0.01	0.02
Europe	0.32	0.35	0.37	0.30	0.42
Japan & North Asia	0.15	0.26	0.21	0.21	0.19
Middle East Gulf	0.01	0.01	0.01	0.01	0.02
New Zealand	0.28	0.28	0.16	0.21	0.27
No Trade Area[a]	0.00	0.00	0.00	0.00	0.00
North America	0.22	0.26	0.27	0.23	0.23
Papua New Guinea & Pacific Islands	0.07	0.14	0.09	0.17	0.09
Red Sea & Mediterranean Middle East	0.01	0.02	0.02	0.01	0.01
South-East Asia	0.70	0.80	1.02	1.27	1.59
Total	**2.27**	**2.40**	**2.33**	**2.98**	**3.32**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.17 **Share of total liner export tonnage transhipped by region of transhipment, 1989-90 to 1997-98 (per cent)**

Including cargo transhipped within the region of destination

Country/region of transhipment	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	0.05	0.05	0.25	0.22	0.34
Latin America	0.04	0.08	0.02	0.26	0.06
East Asia	0.29	0.60	0.44	1.31	1.01
India	0.10	0.08	0.07	0.09	0.08
Europe	3.08	2.64	2.27	1.85	1.67
Japan & North Asia	0.85	0.23	0.30	0.21	0.32
Middle East Gulf	0.06	0.11	0.04	0.06	0.10
New Zealand	0.09	0.01	0.01	0.01	0.01
No Trade Area[a]	0.99	0.00	0.00	0.00	0.23
North America	0.23	0.64	0.87	0.49	0.62
Papua New Guinea & Pacific Islands	0.70	0.17	0.09	0.08	0.05
Red Sea & Mediterranean Middle East	0.25	0.03	0.02	0.03	0.01
South-East Asia	0.79	1.46	2.45	3.40	3.43
Total	**7.51**	**6.11**	**6.83**	**8.00**	**7.94**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.18 **Share of total liner import tonnage transhipped by region of transhipment, 1989-90 to 1997-98 (per cent)**

Including cargo transhipped within the region of origin

Country/region of transhipment	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Africa	0.21	0.18	0.09	0.21	0.14
Latin America	0.10	0.09	0.07	0.06	0.15
East Asia	2.45	2.70	2.06	4.34	3.77
India	0.01	0.03	0.02	0.01	0.02
Europe	12.85	8.81	9.96	8.25	8.96
Japan & North Asia	0.18	0.29	0.23	0.23	0.21
Middle East Gulf	0.03	0.04	0.03	0.05	0.06
New Zealand	0.28	0.28	0.16	0.21	0.27
No Trade Area[a]	0.00	0.00	0.00	0.00	0.00
North America	0.94	1.37	1.46	1.51	1.56
Papua New Guinea & Pacific Islands	0.07	0.17	0.10	0.17	0.10
Red Sea & Mediterranean Middle East	0.01	0.02	0.02	0.01	0.01
South-East Asia	3.32	3.99	4.44	3.82	3.41
Total	**20.45**	**17.98**	**18.64**	**18.89**	**18.66**

a Trade area unspecified.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

C.6 Landbridging

Landbridging of cargoes usually occurs when there is insufficient cargo to make it worthwhile for a vessel to stop at the nearest available port to pick up or drop off the cargo. Cargo is therefore transported by rail or road to or from the nearest port at which the vessel stops. Landbridging data presented in this appendix assume landbridging occurs when the port of loading or unloading is in a different state to the state of origin or destination.

Table C.19 **Share of liner export tonnage landbridged by state of origin, 1989-90 to 1997-98 (per cent)**

State of origin	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
ACT	100	100	100	100	100
New South Wales	11	20	21	19	19
Northern Territory	6	22	93	17	5
Queensland	9	10	10	12	11
South Australia	29	33	34	43	32
Tasmania	28	24	23	21	28
Victoria	11	4	4	4	6
Western Australia	2	5	3	3	3
Total	**12**	**14**	**13**	**14**	**13**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.20 **Share of liner import tonnage landbridged by state of destination, 1989-90 to 1997-98 (per cent)**

State of destination	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
ACT	100	100	100	100	100
New South Wales	0	0	0	0	1
Northern Territory	9	18	2	1	1
Queensland	19	13	11	13	13
South Australia	39	38	37	38	29
Tasmania	27	21	20	9	15
Victoria	0	0	0	0	1
Western Australia	3	3	1	1	2
Total	**5**	**4**	**4**	**4**	**5**

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.21 **Share of liner export tonnage landbridged by state of loading, 1989-90 to 1997-98 (per cent)**

State of loading	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
New South Wales	31	19	19	18	17
Northern Territory	0	0	0	0	0
Queensland	11	14	13	11	16
South Australia	2	5	2	2	6
Tasmania	0	1	1	1	1
Victoria	54	61	63	65	59
Western Australia	1	1	2	2	3

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.22 **Share of liner import tonnage landbridged by state of unloading, 1989-90 to 1997-98 (per cent)**

State of unloading	*1989-90*	*1991-92*	*1993-94*	*1995-96*	*1997-98*
New South Wales	45	35	40	46	42
Northern Territory	0	0	0	0	0
Queensland	1	1	1	3	3
South Australia	0	1	0	0	6
Tasmania	0	0	0	0	0
Victoria	51	61	47	39	39
Western Australia	2	2	12	12	9

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Table C.23 **List of countries comprising trade regions**[a]

Trade region	*Countries*
Africa	Algeria, Angola, Benin, British Indian Ocean Territory, Cameroon, Cape Verde, Comoros, Congo Republic, Cote D'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Libya, Madagascar, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Reunion, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, St Helena, Tanzania, Togo, Tunisia, Western Sahara, Zaire
Central America & Caribbean	Antigua & Barbuda, Bahamas, Barbados, Belize, Bermuda, Cayman Islands, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, French Antilles, French Guiana, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Nicaragua, Panama, Puerto Rico, St Lucia, Surinam, Trinidad & Tobago, Turks & Caicos Islands, United States Virgin Islands, Venezuela, Virgin Islands (Br)
East Asia	China, Hong Kong, Macao, Philippines, Taiwan
East India	Bangladesh, India, Myanmar
Europe – Atlantic	Belgium-Luxembourg, Denmark, Iceland, Ireland, Netherlands, Norway, Portugal, United Kingdom
Europe – Baltic	Finland, Germany, Poland, Sweden
Europe – Mediterranean	Albania, Bulgaria, Cyprus, France, Gibraltar, Greece, Hungary, Italy, Malta, Romania, Spain, Turkey, Yugoslavia
Japan & North Asia	Japan, Korea, North Korea, Russia
Middle East Gulf	Bahrain, Persian Gulf, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates
North America – East Coast	Canada, Mexico, St Pierre & Miquelon, United States Of America
North America – West Coast	Johnston & Sand Island, Midway Islands
Pacific Islands & Other	Aust Antarctic Terr, Cook Islands, Fiji, French Polynesia, French Sth Antarct Terr Guam, Kiribati, Nauru, New Caledonia, Niue, Norfolk Island, Pitcairn Island, Ross Dependency, Samoa (American), Tokelau, Tonga, Trust Territory Pac Isld, Tuvalu, U.S. Misc Pacific Islands, Vanuatu, Wake Island, Wallis & Futuna Islands, Western Samoa
Papua New Guinea & Solomon Islands	Papua New Guinea, Solomon Islands
Red Sea & Mediterranean Middle East	Djibouti, Egypt, Ethiopia, Israel, Jordan, Lebanon, Sudan, Syria, Yemen, Yemen Arab Republic
South America	Argentina, Brazil, Ecuador, Falkland Islands, Peru, Uruguay
South-East Asia	Brunei, Christmas Island, Cocos Islands, Indonesia, Kampuchea, Malaysia, Singapore, Thailand
West India	Maldives, Pakistan, Sri Lanka

a These are the countries comprising each trade region as specified by the ABS in its trade statistics data collection.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

D Evaluation of liner shipping services to Australia

This appendix presents data useful in evaluating liner shipping services to Australia. Indicators of the service provided by conference and non-conference lines — including ports of call (foreign and Australian), frequency of services, capacity on routes and transit times — are presented in section D.1. Available information relating to freight rates for liner shipping services is presented in section D.2.

Data presented in this appendix are indicative data only. The Australian liner shipping market is continually changing. Therefore the data presented in this appendix may not be precise, but nevertheless give an indication of the current level of liner services to Australia.

D.1 Service

Capacity and frequency on major liner trades

Europe

Table D.1 **Estimated conference and non-conference liner capacity on Europe trade, 1993 (TEU)**[a]

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[b]	*Average monthly capacity*	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
Non-conference direct:						
ABC Container Line	1 942	6 478	5	1	388	1 296
Baltic Shipping Company	600	5 774	8	2	150	1 444
CGM[c]	450	7 412	5	1	90	1 482
Contship-Eagle	580	11 569	10	4	232	4 628
MSC[d]	na	2 567	6	2	na	1 711
Zim Line[e]	225	5 974	6	2	75	1 991
Total non-conference direct	*3 797*	*39 774*	*40*	*12*	*935*	*12 552*
Non-conference transhipment:						
OOCL	205	2 627	3	2.2	150	1 926
MISC	450	3 150	3	3.0	450	3 150
Hanjin[c]	170	2 288	3	2.0	113	1 525
NOL	250	2 054	2	3.5	438	3 595
Total non-conference transhipment[f]	*1 075*	*10 119*	*11*	*10.7*	*1 151*	*10 196*
Total non-conference	*4 872*	*49 893*	*51*	*22.7*	*2 086*	*22 748*
Conference:						
AESC - ANZECS Eastabout	8 525	10 328	8	3	3 197	3 873
- ANZECS Westabout	2 000	5 688	5	4	1 600	4 550
- Wilhelmsen[c]	1 200	16 713	9	2	267	3 714
Total conference	*11 725*	*32 729*	*22*	*9*	*5 064*	*12 137*
Total trade	**16 597**	**82 622**	**73**	**32**	**7 150**	**34 885**

a Vessel capacities are optimum capacities and do not take into account deadweight limitations and the fact that some of this capacity may be used for cargo from other countries. **b** Approximate. **c** Reefer capacity of one ship is unknown therefore total capacity of that ship is assumed to be dry. **d** Reefer capacity unknown. Total capacity of only three ships is known therefore average monthly capacity is calculated for these three ships only. **e** Reefer capacity for two ships is unknown therefore total capacity of those ships is assumed to be dry. **f** This is the total capacity of transhipment vessels. Only a proportion of this capacity will be available to cargo on the Australia–Europe trade**. na** Data not available.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 14).

Table D.2 **Estimated conference and non-conference liner capacity on Europe trade, 1998 (TEU)**[a]

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[b]	*Average monthly capacity*	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
Non-conference direct:						
MSC	3 600	20 400	12	4	1 200	6 800
Total non-conference direct	*3 600*	*20 400*	*12*	*4*	*1 200*	*6 800*
Non-conference transhipment:						
ASA	1 376	6 639	8	8	1 376	6 639
AAA	1 720	7 160	8	8	1 720	7 160
AAX	1 200	8 244	5	4	960	6 595
Maersk (WA service)	300	300	2	4	600	600
Maersk (East Coast service)	1 500	5 000	5	4	1 200	4 000
K Line (WA service)	500	5 308	5	4	400	4 246
Total non-conference transhipment[d]	*6 596*	*32 651*	*33*	*32*	*6 256*	*29 241*
Total non-conference	*10 196*	*53 051*	*45*	*36*	*7 456*	*36 041*
Conference:						
AELA – Contship-Eagle	2 200	14 612	6	2	733	4 871
- Wilhelmsen	1 400	18 013	9	2	311	4 003
- P&O Nedlloyd - Mediterranean	1 750	8 280	5	2	700	3 312
- OSCL/CGM/Marfret	2 400	15 200	8	3	900	5 700
- P&O Nedlloyd - Eastabout	6 432	7 371	6	2	2 144	2 457
Total conference	*14 182*	*63 476*	*34*	*11*	*4 788*	*20 343*
Total trade	**24 378**	**116 527**	**79**	**47**	**12 244**	**56 383**

a Vessel capacities are optimum capacities and do not take into account deadweight limitations and the fact that some of this capacity may be used for cargo from other countries. **b** Approximate. **c** Queensland service. **d** This is the total capacity of transhipment vessels. Only a proportion of this capacity will be available to cargo on the Australia–Europe trade.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 14).

Table D.3 **Estimated conference and non-conference liner capacity on North-East Asia trade, 1993 (TEU)**

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[a]	*Average monthly capacity*	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
Non-conference direct:						
Bridge Line/EAC (East Coast)	900	1 900	3	2	600	1 267
EAC (West Coast)	516	140	2	2	516	140
Contship	580	11 569	10	4	232	4 628
COSCO (to East Asia)	141	3 031	3	3.5	165	3 536
COSCO (to Japan)[b]	350	2 296	4	3.5	306	2 009
FESCO	360	3 888	6	3	180	1 944
Southern Cross Line[c]	na	2 200	4	1.5	na	825
Wilhelmsen	1 200	16 713	9	2	267	3 714
Zim	225	5 974	6	2	75	1991
Total non-conference direct	*4 272*	*47 711*	*47*	*23.5*	*2 340*	*20 054*
Non-conference transhipment:						
Hanjin	170	2 188	3	2	113	1 459
MISC	800	6 256	3	3	800	6 256
Total non-conference transhipment[d]	*970*	*8 444*	*6*	*5*	*913*	*7 715*
Total non-conference	*5 242*	*56 155*	*53*	*28.5*	*3 254*	*27 768*
Conference:						
ANSCON						
- Consortium	4 834	12 040	8	5.5	3 323	8 278
- OOCL	205	2 627	3	2.2	150	1 926
- WA service	335	2 149	3	2.5	279	1 791
Total conference	*5 374*	*16 816*	*14*	*10.2*	*3 753*	*11 995*
Total trade	**10 616**	**72 971**	**67**	**39**	**7 007**	**39 763**

a Approximate. **b** Reefer capacity for one ship is not available therefore assume total capacity for that ship is dry. **c** Reefer capacity not available therefore assume total capacity is dry. **d** This is the total capacity of transhipment vessels. Only a proportion of this capacity will be available for cargo on the Australia–North-East Asia trade**. na** Data not available.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 23).

Table D.4 **Estimated conference and non-conference liner capacity on North-East Asia trade, 1998 (TEU)**[a]

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[b]	*Average monthly capacity*	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
Non-conference direct:						
Contship[c]	na	25 612	10	2	na	5 122
COSCO (to East Asia)	162	3 798	3	4	216	5 064
COSCO (to Japan/Korea)	460	4 118	5	4	368	3 294
FESCO	320	4 746	4	4	320	4 746
Maersk/Blue Star/Cho Yang (East Coast)	1 500	6 000	5	4	1 200	4 800
Maersk (West Coast)	350	1 450	3	4	467	1 933
MSC[d]	410	5 258	4	4	410	5 258
Wilhelmsen[d]	1 200	18 213	9	3	400	6 071
Total non-conference direct	*4 402*	*69 195*	*43*	*29*	*3 381*	*36 289*
Non-conference transhipment:						
Evergreen/Hanjin[e]	845	7 346	7	6	724	6 297
MISC	2 960	14 099	15	6	1 184	5 640
Total non-conference transhipment[f]	*3 805*	*21 445*	*22*	*12*	*1 908*	*11 936*
Total non-conference	*8 207*	*90 640*	*65*	*41*	*5 289*	*48 225*
Conference:						
ANSCON						
- Japan/Korea	3 768	9 206	6	4.3	2 700	6 598
- East Asia	1 063	9 737	5	4.3	914	8 374
- WA service	834	4 974	5	4.3	717	4 277
Total conference	*5 665*	*23 917*	*16*	*13.2*	*4 332*	*19 249*
Total trade	**13 872**	**114 557**	**81**	**54**	**9 621**	**67 474**

a In 1993 ANSCON served both North and East Asia, but in 1996 the two trades were separated into dedicated East Asia and Japan/Korea trades. **b** Approximate. **c** Contship changed from a direct to a transhipment service in 1998. Reefer capacity is not available therefore assume total capacity is dry. **d** Reefer capacity is not available for one ship therefore assume total capacity of that ship is dry. **e** Reefer capacity is not available for two ships therefore assume total capacity of those ships is dry. **f** This is the total capacity of transhipment vessels. Only a proportion of this capacity will be available for cargo on the Australia–North-East Asia trade. **na** Data not available.

Sources: Liner Shipping Services Ltd (sub. 10, att. C, pp. 25–27); Liner Shipping Services (pers. comm., 19 July 1999).

Table D.5 **Estimated conference and non-conference liner capacity on South-East Asia trade, 1993 (TEU)**[a]

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[b]	*Average monthly capacity*[c]	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
NYK/Hanjin/LT/RCL	570	2 334	4	varies	na	na
COSCO	42	1 430	2	2	42	1 430
CGM	600	7 267	5	1	120	1 453
Contship-Eagle	580	11 569	10	4	232	4 628
Wilhelmsen[d]	na	18 304	9	2	na	4 068
Zim	225	5 974	6	2	75	1 991
Southern Cross Line	na	2 200	4	1.5	na	825
EAC Lines (West Coast)	260	660	2	2	260	660
Stateships of WA (West Coast)	60	240	2	2.5	75	300
Total non-conference	*2 337*	*49 978*	*44*	*17*	*804*	*15 355*
Conference:						
- ANL (ANRO Consortium)	300	1 088	1	3.5	1 050	3 808
- ASCL (ANRO Consortium)	404	1 521	2	3.5	707	
- NOL (ANRO Consortium)	500	1 686	2	3.5	875	2 951
- DJL (ANRO Consortium)	250	2 054	2	3.5	438	3 595
- MISC	450	3 150	3	3	450	3 150
- NLL	140	1 320	1	2	280	2 640
Total conference	*2 044*	*10 819*	*11*	*19*	*3 800*	*16 144*
Total trade	**4 381**	**60 797**	**55**	**36**	**4 604**	**31 499**

[a] This is the total capacity of vessels in the Australia–South-East Asia trade. As a significant volume of Australian cargo to other trade areas is transhipped in South-East Asia, not all of this capacity will be dedicated to the Australia–South-East Asia trade. [b] Approximate. [c] Non-conference average monthly capacity is underestimated as NYK/Hanjin/LT/RCL are not included in calculation. [d] Reefer capacity is not available therefore total capacity is shown as dry.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 37).

Table D.6 **Estimated conference and non-conference liner capacity on South-East Asia trade, 1998 (TEU)**[a]

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[b]	*Average monthly capacity*	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
PIL/MISC[c]	700	3 186	4	2	350	1 590
OSCL/CGM/Marfret	2 400	15 200	8	3	900	5 700
Contship-Eagle	2 200	14 612	6	2	730	4 870
Wilhelmsen	1 400	18 013	9	2	310	4 000
P&O Nedlloyd - Mediterranean	1 750	8 280	5	2	700	3 310
Total non-conference	*8 450*	*59 291*	*32*	*11*	*2 990*	*19 470*
Conference:						
ASA Consortium	1 376	6 639	8	8	1 376	6 639
AAA Consortium	1 720	7 160	8	8	1 720	7 160
AAX Consortium	1 200	8 244	5	4	960	6 595
Maersk (WA service)	300	300	2	4	600	600
K Line (WA service)	500	5 308	5	4	400	4 246
Total conference	*5 096*	*27 651*	*28*	*28*	*5 056*	*25 240*
Total trade	**13 546**	**86 942**	**60**	**39**	**8 046**	**44 710**

a The conference operating in this route in 1993 was replaced by a discussion agreement in 1997. Membership of the discussion agreement is significantly different to the conference. This is the total capacity of vessels in the Australia–South-East Asia trade. As a significant volume of Australian cargo to other trade areas is transhipped in South-East Asia, not all of this capacity will be dedicated to the Australia–South-East Asia trade. **b** Approximate. **c** Servicing Brisbane only.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 41).

Table D.7 **Estimated conference and non-conference liner capacity on North America trade, 1993 (TEU)**

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[a]	*Average monthly capacity*[b]	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
Non-conference direct:						
Wilhelmsen	na	na	na	2.7	na	na
MSC	na	na	na	2.8	na	na
Nedlloyd (IMT)	na	na	na	1.1	na	na
ABC	na	na	na	1.7	na	na
CGM	na	na	na	2.0	na	na
SPI	na	na	na	1.2	na	na
Cool Carriers	na	na	na	irregular	na	na
Total non-conference direct	*na*	*na*	*na*	*11.5*	*na*	*na*
Non-conference transhipment:						
NYK	na	na	na	na	na	na
MISC	na	na	na	na	na	na
COSCO	na	na	na	2.8	na	na
Total non-conference transhipment	*na*	*na*	*na*	*na*	*na*	*na*
Total non-conference	*na*	*na*	*na*	*na*	*na*	*na*
Conference:						
ANZDL	1 340	3 260	4	2.5	838	2 038
Blue Star Line (US W.Coast)	1 300	1 224	2	1.3	845	796
Blue Star Line (US E.Coast)	2 720	2 642	4	1.7	1 156	1 123
Columbus Line (US W.Coast)	1 470	744	3	1.9	931	471
Columbus Line (US E.Coast)	2 066	2 075	3	1.7	1 171	1 176
Total conference	*8 896*	*9 945*	*16*	*9*	*4 941*	*5 604*
Total trade	**na**	**na**	**na**	**na**	**na**	**na**

a Approximate. **na** Data not available.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 44).

Table D.8 **Estimated conference and non-conference liner capacity on North America trade, 1999 (TEU)**

Line	*Total capacity*		*Number of ships*	*Monthly frequency*[a]	*Average monthly capacity*	
	Reefer	*Dry*		*(voyages/mth)*	*Reefer*	*Dry*
Non-conference direct[b]:						
C&S Shipping	na	na	3	1.4	na	na
FESCO	980	8 784	8	4.3	527	4 721
Wilhelmsen	150	2 250	3	1	50	750
BHP/IMTL[c]	84	1 322	2	1	42	661
Total non-conference direct	*1 214*	*12 356*	*16*	*7.7*	*619*	*6 132*
Non-conference transhipment:						
Maersk	1 500	6 000	5	4	1 200	4 800
MSC	3 600	20 400	12	4	1 200	6 800
Total non-conference transhipment[d]	*5 100*	*26 400*	*17*	*8*	*2 400*	*11 600*
Total non-conference	*6 314*	*38 756*	*33*	*15.7*	*3 019*	*17 732*
Conference:						
ANZDL (US W.Coast)	1 858	6 501	7	3.75	995	3 483
Blue Star/Columbus (US W.Coast)	2 975	7 400	8	4.3	1 594	3 964
Blue Star /Columbus (US E.Coast)	6 334	6 220	10	4.3	2 715	2 665
Total conference	*11 167*	*20 121*	*25*	*12.3*	*5 304*	*10 112*
Total trade	**17 481**	**58 877**	**58**	**28**	**8 323**	**27 844**

a Approximate. **b** CMA/CGM/Contship also operate a southbound service only from east coast North America. **c** BHP operate a breakbulk service primarily to ship BHP steel products. Only a small volume of cargo is carried in containers. **d** This is the total capacity of transhipment vessels. Only a proportion of this capacity will be available to cargo on the Australia–North America trade**. na** Data not available.

Source: DTRS Liner Service Sheets.

Australian ports of call

Table D.9 **Australian ports of call, 1999 (northbound)**

Trade	*Conference/line*	*Sydney*	*Melbourne*	*Brisbane*	*Fremantle*	*Adelaide*	*Other*
Europe	AELA	●	●	●	●	●	Burnie
	MSC	●	●		●	●	
	ASA	●	●	●		●	
	AAA	●	●	●	●	●	Burnie/ Bell Bay[a]
	AAX	●	●	●	●	●	Hobart
	Maersk	●	●	●			
North-East Asia	ANSCON	●	●	●	●		
	COSCO	●	●	●			
	FESCO	●	●	●		●	
	China Shipping	●	●	●			
	Maersk/Cho Yang/Sea-Land	●	●	●	●		
	MSC[b]	●	●	●		●	
	Wilhelmsen	●	●	●	●		Newcastle
	MISC	●			●		
	Hanjin[c]	●	●	●		●	
	K Line				●		
South-East Asia	ASA	●	●	●		●	
	AAA	●	●	●	●	●	Burnie/ Bell Bay[a]
	AAX	●	●	●	●	●	Hobart
	Maersk[d]	●	●	●	●		
	K Line				●		
	MSC	●	●	●	●	●	
	CGM/Contship/ Marfret	●	●	●	●		
	Wilhelmsen	●	●	●	●		Newcastle
	FESCO	●	●	●		●	
	Perkins						Darwin
	PAS						Hobart, Newcastle.
	NGPL			●			Gladstone, Townsville, Darwin.
North America	AUSCLA	●	●	●		●	
	MSC/Safbank	●	●	●	●	●	
	FESCO	●	●	●		●	
	COSCO	●	●	●		●	
	Wilhelmsen	●	●	●	●	●	
	Sea-Land	●	●	●			

a Burnie and Bell Bay are serviced alternately. **b** After May 1999, MSC will only service Sydney, Melbourne and Brisbane. **c** Brisbane and Adelaide serviced alternately. **d** Fremantle is on a separate service.

Sources: Crichton (1998, pp. 57–63); Liner Shipping Services Ltd (sub. 10, att. C); *Daily Commercial News*, 24 May 1999.

Table D.10 **Australian ports of call, 1999 (southbound)**

Trade	*Conference/line*	*Sydney*	*Melbourne*	*Brisbane*	*Fremantle*	*Adelaide*	*Other*
Europe	AELA	●	●	●	●	●	Newcastle
	MSC	●	●	●	●	●	
	ASA	●	●	●	●		
	AAA	●	●	●	●	●	Burnie/ Bell Bay[b]
	AAX	●	●	●	●	●	Hobart
	Maersk	●	●	●			
North-East Asia	ANSCON	●	●	●	●		
	COSCO	●	●	●			
	FESCO	●	●	●		●	
	China Shipping Container Line	●	●	●			
	Maersk/Cho Yang/Sea-Land	●	●	●	●		
	MSC[a]	●	●	●	●	●	
	Wilhelmsen	●	●	●	●	●	Newcastle
	Cape Line	●	●	●			
	AAL		●	●			
	K Line				●		
South-East Asia	ASA	●	●	●	●		
	AAA	●	●	●	●	●	Burnie/ Bell Bay[b]
	AAX	●	●	●	●	●	Hobart
	Maersk	●	●	●			
	K Line				●		
	MSC	●	●	●	●	●	
	CGM/Contship/ Marfret	●	●	●			
	Wilhelmsen	●	●	●	●		Newcastle
	COSCO	●	●	●			
	FESCO	●	●	●		●	
	AMEG		●		●		
	AAL		●	●			Hobart, Newcastle.
	NGPL						Darwin
North America	AUSCLA	●	●	●		●	
	MSC	●	●	●	●	●	
	FESCO	●	●	●		●	
	CGM/Contship/ Marfret	●	●	●			
	Wilhelmsen	●	●	●	●	●	Newcastle

a After May 1999 MSC will only service Sydney, Melbourne and Brisbane. **b** Burnie and Bell Bay are serviced alternately.

Sources: Crichton (1998, pp. 57–63); Liner Shipping Services Ltd (sub. 10, att. C); *Daily Commercial News*, 24 May 1999; DTRS Liner Service Sheets.

Table D.11 **Liner arrivals at principal Australian ports by type of vessel, 1997-98**

First and all ports of call

Port region	*Container*	*Conventional*	*Ro-Ro*	*Total*
All arrivals				
Sydney	1 214	88	285	1 587
Melbourne	1 200	67	264	1 531
Brisbane	733	105	276	1 114
Fremantle	633	67	93	793
Adelaide	289	23	114	426
First port arrivals				
Sydney	464	25	32	521
Melbourne	398	20	4	422
Fremantle	346	30	3	379
Brisbane	262	60	1	323
Adelaide	na	na	na	na

na Data not available.

Source: Customs Figures (Issue 11, p. 26).

Foreign ports of call and transit times

Europe

Table D.12 **Foreign ports of call and transit times on Australia to Europe trade, 1993**

Port of call	*Transit time (days)*[a]						
	AESC	*ABC*	*Baltic*	*CGM*	*Contship-Eagle*	*MSC*	*Zim*
Piraeus	18						58
Venice							61
Koper							64
Tripoli							60
Naples	21						60
Leghorn		56				33	
La Spezia	22				42		
Genoa			21	30			57
Barcelona	26					33	54
Valencia						31	
Fos-sur-Mer	25						55
Marseilles				31		34	
Lisbon	33						
Le Havre				45	44	43	
Dunkirk				43			
Flushing			28				
Antwerp				38		33	
Zeebrugge	35	45					
Rotterdam	30				45	34	
Hamburg	34	48	28	40	50	38	
Bremerhaven						38	
Gothenburg	35						
St Petersburg			33				
Tilbury	E36/W29[b]						
Felixstowe		47	27		45	35	

[a] Transit times are based on last Australian loading port to discharge port. [b] Eastabout/Westabout transit times.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 15).

Table D.13 **Foreign ports of call and transit times on Australia to Europe trade, 1999**

Port of	*Transit time (days)*[a]					
Call	*AELA*	*MSC*	*ASA*	*AAA*[b]	*AAX*[c]	*Maersk (East Coast)*
Piraeus	20	43				44
Salerno	22					38
Genoa						42
Leghorn						44
La Spezia	22	39				
Marseilles	29	40				
Fos-sur-Mer	25					48
Barcelona	26	41				38
Valencia		35				42
Limassol		49				
Trieste						41
Varna						43
Lisbon	39					
Zeebrugge	30					
Tilbury	31					
Hamburg	33	36	31		•	48
Bremerhaven	30	37			•	40
Gothenburg	31		40			42
Southampton	22				•	40
Rotterdam	35	33	29		•	•
Dunkirk	36					
Antwerp	29	32			•	42
Le Havre	30	40	27		•	42
Felixstowe		34	33			36
Copenhagen			40			43
Helsinki			41			44
Aarhus			40			•
Oslo			41			

[a] Transit times are based on last Australian loading port to discharge port. [b] Ports of call and transit times are not available for AAA. [c] Transit times are not available for AAX. • Indicates port of call.

Source: Daily Commercial News, 24 May 1999; Liner Shipping Services (pers. comm., 19 July 1999).

Table D.14 **Foreign ports of call and transit times on Australia to North-East Asia trade, 1993**

Port of call	*Transit time from Melbourne (days)*								
	ANSCON [a]	*Bridge/ EAC*	*COSCO*	*FESCO*	*Wilhelmsen*	*Zim*	*Contship*	*MISC*	*Southern Cross*
Yokahama	14	13	17	26	39	16			
Yokkaichi	16								
Nagoya	16			25					
Osaka/Kobe	18	14	19	24	36	18			
Busan	21	16			34	20			
Manila	32/22		14	17				24	
Keelung	23/18				32	23	17	25	
Kaohsiung	26/16							24	23
Hong Kong	26/20		17	20	30	26	19	22	22

[a] Two conference services operate to East Asian ports.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 24).

Table D.15 **Foreign ports of call and transit times on Australia to North-East Asia trade, 1999**

Port of call	*Transit time from Melbourne (days)*									
	ANSCON[a]	*COSCO*	*FESCO*	*China Shipping*	*Maersk*	*MSC*	*MISC*	*Hanjin*	*Cape Line*	*Wilhelmsen*
Yokahama	–/14/–	14			12	13		28	22	27
Yokkaichi	–/16/–									
Nagoya	–/16/–				16[c]					26
Osaka/Kobe	–/18/12	17			14	15		24	20	25
Busan	–/20/14	19			16	17			18	
Manila		14	15	14			23	17		
Keelung	14/–/20		23[b]		14[c]		26			
Kaohsiung	17/–/–		24[b]		20		23			
Hong Kong	19/–/–	17	19	17	22	22	21	18		17
Shekou	–/20/–									
Dalian	–/–/16	31[d]			18[c]		23[c]	30		
Hakata	–/–/18			24	16		30[c]	39		
Quindao		28[d]		26			20[c]	23		21
Shanghai		21	17[b]	20	22[c]	17	16[c]	24		
Xiamen							20[c]	21		
Xingang							19[c]	22		
Ningbo					23[c]					19
Shimizu										
Chiwan						23				
Tomakomai								35		
Huangpu		24								
Taichung			26[b]				25			
Yantian			18							
HoChiMin City							22	20		
Guanz		30[d]								
Tokyo								24		
Moji				23				34		

[a] ANSCON operates three service rotations: East Asia; Japan/Korea; and North China. [b] Transhipment via Hong Kong. [c] Transit time from Fremantle. [d] Transhipment via Shanghai. • Indicates port of call.

Source: Daily Commercial News, 24 May 1999; Liner Shipping Services (pers. comm., 19 July 1999).

Table D.16 **Foreign ports of call and transit times on Australia to South-East Asia trade, 1993**

Port of call	*Transit time from Melbourne[a] (days)*								
	ANRO Consortium[b]	*MISC/NLL[b]*	*NYK/ HANJIN/ LT/RCL*	*COSCO*	*CGM*	*Eagle[c]*	*Zim[d]*	*Wilhelmsen*	*Southern Cross Line*
Jakarta	9-13	22	19-21	14-15	15-16	28			
Singapore	12-16	15	11-13	16-17		24	30-32	16-24	18
Port Kelang	13-17	16	14-16			25-27			17
Penang	15-19	19	14-16			27			
Bangkok	16-20	18-19	15-17			28		21-29	22

[a] Where a range is given, transit time depends on routing of vessels through various ports. [b] Members of conference. [c] Transhipment via Taiwan/Hong Kong. [d] Transhipment via Japan, Korea, Taiwan, Hong Kong.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 38).

Table D.17 **Foreign ports of call and transit times on Australia to South-East Asia trade, 1999**

Port of Call	*Transit time from Melbourne (days)*											
	ASA[a]	*AAA[a]*	*AAX[a]*	*Maersk (West Coast)[a]*	*K Line (West Coast)[a]*	*Maersk (East Coast)[a]*	*CGM/Contship /Marfret*	*Wilhelmsen*	*FESCO*	*PAS[b]*	*Perkins[c]*	*NGPL[d]*
Jakarta[e]	14	20		11	4	27	7			31		14
Singapore	12	13	14	6	6	25	10	11		28	7	16
Port Kelang	14	12	15	7		26		16		26		17
Penang[f]	14	17		8		28						
Bangkok[f]	16	19		11		28	22	18	18[g]			
Madras	22						26					
Calcutta	20	24					26					
Chittagong	30	23										
Colombo	20	21					14					
Ho Chi Minh	20						21					
Surabaya	15	21		11			20					12
Mumbai		24					28					

[a] Member of Trade Facilitation Group. [b] Transit time from Newcastle. [c] Transit time from Darwin. [d] Transit time from Brisbane. [e] Some lines/consortia serve Jakarta by feeder vessel via Singapore. [f] Penang and Bangkok are served by feeder vessels from Singapore. [g] Transhipment via Hong Kong.

Source: Daily Commercial News, 24 May 1999.

Table D.18 **Foreign ports of call and transit times on Australia to North America trade, 1993**

Port of	*Transit time[a] (days)*						
Call	*AUSDA*	*Wilhelmsen*	*MSC*	*Nedlloyd (IMT)*	*ABC*	*SPI*	*Cool Carriers[b]*
Philadelphia	29				36		
Jacksonville	33						
Norfolk	32	66	47				
Charleston	31				36		
Boston	29						
New York	28						
Houston	31				24		
Seattle	21						
San Francisco	22			35		30	
Los Angeles	24	46		37		32	26/35
Honolulu	15					17	

a Transit times are based on last Australian loading port to discharge port. **b** Irregular service to Pt Hueneme CA via NSW Australia/SE Australia.

Source: Liner Shipping Services Ltd (sub. 10, att. C, p. 45).

Table D.19 **Foreign ports of call and transit times on Australia to North America trade, 1999**

Port of	*Transit time[a] (days)*					
Call	*AUSCLA*	*MSC/ Safbank*	*FESCO*	*COSCO*	*Sea-Land[b]*	*Wilhelmsen*
Philadelphia	30	41		30		
Savannah	30			30		39
Newport News		41				
Baltimore		40				36
Norfolk	33			33		37
Charleston	23	43		22		
New York	29	38	27	29		
Houston	28			31		
Seattle	26		22	25		
San Francisco /Oakland	20	28	27		22	
Los Angeles /Long Beach	22	26	18	26	24	
Chicago	28			30		
Freeport		39				
Boston	33			20		
New Orleans	30			30		
Portland	30		24[c]	29		
Toronto	28			27		
Vancouver	27		25[c]	32		
Montreal	27			26		

a Transit times are based on last Australian loading port to discharge port. **b** Transhipment via Yokohama. **c** Transhipment service.

Source: Daily Commercial News, 24 May 1999.

D.2 Freight rates

Table D.20 Indices of freight rates in selected Australian northbound and southbound trades, 1989–1998[a]

Year	*Northbound*			*Southbound*		
	Europe	*South-East Asia*	*Japan/Korea*	*Europe*	*South-East Asia*	*Japan/ Korea*
1989	100.0	100.0	100.0	100.0	100.0	100.0
1990	91.0	107.2	94.9	97.2	101.9	91.0
1991	80.9	102.6	97.3	88.9	89.3	78.0
1992	79.8	101.0	91.2	77.0	72.8	73.0
1993	82.0	112.2	91.5	75.0	64.1	68.0
1994	76.4	103.1	98.7	78.7	53.4	62.0
1995	74.3	100.7	102.7	81.4	53.4	69.3
1996	78.8	97.9	93.3	82.3	52.2	63.8
1997	74.0	76.2	89.9	81.4	40.2	59.0
1998	70.7	53.7	78.7	72.6	26.8	58.0

a Each trade is indexed separately. Northbound indices are based on estimates of actual terminal-to-terminal rates in Australian dollars, averaged over all reefer and dry cargoes. Southbound indices are based on estimates of actual terminal-to-terminal rates in US dollars, averaged over all reefer and dry cargoes.

Source: Liner Shipping Services (sub. 10, p. 12).

Table D.21 Indices of freight rates paid by BHP for exports to Asian destinations, 1995–1998[a]

Date	*Singapore*	*Bangkok*	*East Malaysia*	*Hong Kong*	*Taiwan*	*Japan*
1995	100	100	100	100	100	100
1997	85	84	100	89	98	94
June 1998	60	58	68	83	90	76
December 1998	48	45	63	75	71	72

a Each destination is indexed separately.

Source: BHP Company Ltd (sub. 24, p. 2).

Table D.22 **Indices of freight rates in Australia–North America northbound trade, 1993–1999**[a]

Cargo	*Date*	*US West Coast*	*US East Coast*
Household goods and personal effects	1/12/1993	100.0	100.0
	9/9/1995	94.2	94.2
	5/4/1997	93.0	93.0
	17/9/1997	90.7	90.7
	15/5/1998	50.9	56.4
	7/12/1998	41.8	56.4
	15/2/1999	36.8	48.0
Stockfeed – meat and bone meal	1/12/1993	100.0	100.0
	4/1/1994	103.0	103.0
	25/9/1995	97.0	97.0
	9/8/1996	95.8	95.8
	28/4/1997	93.4	93.4
	16/4/1998	79.0	79.0
	28/7/1998	63.6	63.6
Freight all kinds	1/12/1993	100.0	100.0
(mixed shipments of various cargoes)	27/4/1994	88.4	96.7
	1/12/1994	82.6	90.9
	2/12/1995	81.4	89.8
	20/5/1996	71.4	79.6
	24/7/1998	63.7	72.1
Wine	1/12/1993	100.0	100.0
	7/6/1994	98.0	100.0
	14/6/1994	98.0	89.7
	22/11/1994	92.2	83.8
	4/5/1995	80.7	77.5
	9/6/1995	73.4	70.9
	6/11/1995	62.1	60.3
	4/12/1995	50.1	48.3
	4/11/1996	37.3	44.8
	28/10/1997	26.0	28.7

a Each type of cargo is indexed separately.

Source: Liner Shipping Services (pers. comm., 17 August 1998).

Table D.23 **Index of freight rates for wool in Australia–North America northbound trade, 1993–1997**[a]

Twenty and forty foot container rates

Date	*20 foot container*	*Date*	*40 foot container*
1/12/1993	100.0	1/12/1993	100.0
9/5/1994	87.3	9/5/1994	94.2
22/11/1994	81.5	22/11/1994	94.2
17/1/1995	71.9	7/4/1995	67.5
16/11/1995	70.8	10/7/1995	62.1
28/6/1996	82.0	2/12/1995	61.0
19/7/1996	76.4	19/7/1996	66.0
11/4/1997	59.3	11/4/1997	51.6
25/6/1997	50.3	25/6/1997	42.6
16/2/1998	55.5	16/2/1998	47.9

a Each container size is indexed separately.

Source: Liner Shipping Services (pers. comm., 17 August 1998).

E Container shipping cost model

As part of its investigation of container shipping costs and revenues, the Commission developed an illustrative container shipping cost model. The model estimates the streams of costs and revenues for the period 1990–99 for a hypothetical ship assumed to operate in the Australia–South-East Asia trade. An overview is provided in this appendix. Further details are available on request.

The vessel is assumed to have been delivered in early 1990 at a cost of US$30 million (A$44.4 million). The capacity of the vessel is assumed to be 1500 TEU (1200 TEU dry, 300 TEU reefer). The base case calculation assumes 75 per cent capacity utilisation northbound and southbound. The Commission's calculations assume that the vessel benefits from Australian port reform, completing 10 round voyages per year in 1999 compared with 8.75 voyages in 1990.

As noted in chapter 6, the model incorporates a return to capital in the sense of loan repayments for the purchase of the ship (at a risk-free rate of interest), but the cost estimates do not include any return for entrepreneurship and risk-taking.

Capital costs

Vessel costs

The economic life of the vessel is assumed to be 20 years. Monthly payments were calculated, assuming that 100 per cent of the purchase price (A$44.4 million) was borrowed, repayable over a twenty year period (240 equal payments). The calculations assume a residual value of 10 per cent of the purchase price and a 6 per cent rate of interest.

Container costs

The calculations assume that 3600 dry and 900 reefer containers were purchased in 1990, at a price of A$3700 per dry and A$14 100 per reefer container. Monthly payments were calculated, assuming that 100 per cent of the purchase price was borrowed. The containers were assumed to have an economic life of 12 years and to

have no residual value at the end of that period. The calculations assume a 6 per cent rate of interest.

Operating costs

Manning costs

The vessel is assumed to have a crew of 16. Estimates of manning costs are derived from Drewry Shipping Consultants (1999).

Insurance costs

Estimates include both Hull and Machinery (H&M) and Protection and Indemnity (P&I) insurance. H&M insurance normally is in the range 0.25–0.3 per cent of vessel purchase price, and P&I insurance in the range 0.29–0.3 per cent of vessel purchase price. Therefore, a total insurance cost of 0.6 per cent of vessel purchase price was assumed in this model.

Repair and maintenance costs

The base (1990 = 100) Repair and Maintenance (R&M) cost for a 1500 TEU vessel was assumed to be A$400 000 per year. As R&M costs have fallen in the 1990s, the base figure was adjusted using an index of R&M costs derived from table 6.6 in Drewry Shipping Consultants (1999).

Other operating costs

This category includes several diverse elements, primarily stores and supplies and administration. The cost of stores and supplies was estimated using a base (1994 = 100) estimate of A$240 000. Since the cost of stores and supplies has tended to escalate in the 1990s, the base figure was adjusted using an index of stores and supplies costs derived from table 7.1 in Drewry Shipping Consultants (1999). Administration costs, which vary widely across shipping companies, were assumed to be fixed at A$100 000 per year.

Voyage costs

Bunker costs

The vessel is assumed to consume 50 tonnes per day of fuel oil and 2 tonnes per day of marine diesel whilst at sea, and 2 tonnes per day of both fuel oil and marine diesel while in port. Since the vessel is employed on the Australia–South-East Asia trade, it is assumed to purchase all its bunkers in the cheapest bunkering port en route, namely Singapore. The price of fuel oil and marine diesel at Singapore was obtained from the *Lloyd's List Daily Commercial News* (and its predecessor *Daily Commercial News*), *Lloyd's Shipping Manager, Fairplay, Containerisation International,* as well as price lists issued by oil companies.

Port costs

Base (1996) port charges for Melbourne, Sydney and Fremantle were obtained from Bureau of Transport and Communication Economics (BTCE), *Waterline*, 12 September 1997. Base year data were indexed using the national Port Interface Cost Index published in BTCE, *Waterline,* 12 September 1997, table 6. Port costs in Asia (Singapore and Port Kelang) were based on published schedules of port charges and information from *Lloyd's Maritime Asia.*

Cargo handling (stevedoring) costs

Australian stevedoring costs were estimated using data published in Prices Surveillance Authority, *Monitoring of Stevedoring Costs and Charges* (various issues, 1992–95). Stevedoring charges for individual Australian ports are also published in BTCE, *Waterline* (various issues). Stevedoring charges in Singapore and Port Kelang were based on estimates in Bureau of Transport and Communication Economics, *Australian Shipping and the Balance of Payments,* 1990.

Revenue

As noted previously, the estimates relate to a 1500 TEU vessel (with capacity for 1200 dry and 300 reefer containers). The vessel is assumed to complete 8.75 round voyages in 1990, with the number of round voyages increasing over time to 10 voyages in 1999. The calculations assume that reefer cargo is carried northbound but not southbound (reefer slots are assumed to be available for non-refrigerated cargo on the southbound voyage).

Freight rates are assumed to vary over time in accordance with evidence given to the Commission by Liner Shipping Services (sub. 10, p. 12) and reports of freight rates in *Lloyd's List Daily Commercial News,* its predecessor *Daily Commercial News,* and *Containerisation International* (various issues).

The revenue stream, calculated on both a voyage and an annual basis, is compared with the stream of voyage and annual costs (see chapter 6, figure 6.1). The sensitivity of the results to changes in interest rates, capital costs, and load factors were also examined.

F Foreign shipping legislation

Key features of current shipping legislation in Canada, the United States, the European Community and New Zealand are set out in this appendix.

Key Features		*Canada*	*United States*
1	**Applicable legislation**	*Shipping Conferences Exemption Act 1987* exempts certain shipping conference practices from the provisions of Canada's antitrust legislation (the Competition Act).	The *Ocean Shipping Reform Act of 1998*, which supersedes the *Shipping Act of 1984*, confers exemption from antitrust laws to conference agreements and activities within the scope of the Act.
2	**Objectives (abbreviated)**	None stated	(1) to establish a non-discriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs; (2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is … in harmony with … international shipping practices; (3) to encourage the development of an economically sound and efficient US flag liner fleet capable of meeting national security needs; and

(Continued next page)

Key Features		*Canada*	*United States*
			(4) to promote the growth and development of US exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.
3	**Scope of jurisdiction**	Inward and outward	Inward and outward
4	**Key exemptions**		
4.1	*Carriers*		
4.1.1	*Conference arrangements*	Exempt, including consortia that are members of conferences. Conference agreements must establish terms and conditions respecting the use of service contracts by members of a conference.	Exempt — the scope is set out in section 4 of the Act.
4.1.2	*Pooling arrangements*	Exempt	Exempt
4.1.3	*Negotiations with shippers*	Exempt — conferences must meet with shippers upon request, in writing, by any designated shipper group. Information 'sufficient for the satisfactory conduct of the meeting' must be provided to the shipper group by the conference.	Conference agreements must 'establish procedures for promptly and fairly considering shippers' requests and complaints'.
4.1.4	*Loyalty agreements*	Exempt, although 100% loyalty agreements are illegal — agreements may not contain a requirement for a shipper to offer a conference all its goods for transportation with that conference. A loyalty agreement may be terminated by either party at any time after 90 days from the day notice of intention to terminate is given to the other party.	Not exempt
4.1.5	*Collective agreement on door-to-door rates*	Not exempt — conferences, or groups of lines within a conference, are prohibited from drawing up contracts with inland carriers that specify payments to those carriers for inland transportation of cargo. However, an individual member line of a conference may do so.	Exempt — under section 4 of the Act which states ocean common carriers may 'discuss, fix or regulate transportation rates, including through rates, cargo space accommodations and other conditions of service'.

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Key Features		*Canada*	*United States*
4.2	*Shippers*		
4.2.1	*Negotiations with carriers*	Exempt — may be requested of a conference by a shipper group.	Exempt
4.2.2	*Loyalty agreements*	Exempt	Not exempt
5	**Carrier obligations / shipper powers**		
5.1	*Conferences*		
5.1.1	*Minimum levels of service*	No provisions	Not specified
5.1.2	*Negotiable shipping arrangements*	Upon request of a shipper group (see above). The Minister of Transport may designate any organisation or association of shippers as representing the interests of shippers.	Necessary — conference agreements must provide for a consultation process designed to promote commercial resolution of disputes and cooperation with shippers in preventing and eliminating malpractices.
5.2	*Non-conference ocean carriers with substantial market power*	No provisions	No provisions
5.2.1	*Minimum levels of service*	No provisions	No provisions
5.2.2	*Negotiable shipping arrangements*	No provisions	No provisions
6	**Misuse of market power sanction**	The exemption from the application of the Competition Act does not apply in respect of a conference (or inter-conference) agreement if any party to the agreement attempts to: use a vessel to prevent or lessen competition from a carrier that is not a party to the agreement; refuse to transport goods for a shipper because that shipper had used a carrier that is not a party to the agreement; or prevent or limit the use by a carrier of port or other facilities or related services because that carrier is not a party to the agreement.	The Act defines certain 'concerted actions' that are prohibited, including engaging 'in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp or a bulk carrier'. 'No common carrier, either alone or in conjunction with any other person, directly or indirectly, may use a vessel or vessels in a particular trade for the purpose of excluding, preventing or reducing competition, by driving another ocean common carrier out of that trade.'

(Continued next page)

Key Features		*Canada*	*United States*
7	**Unfair pricing sanction**	The exemption from the application of the Competition Act does not apply to any member of a conference who engages in or who conspires, combines, agrees or arranges with another person to engage in predatory practices (as described in paragraph 50(1)(c) of the Act).	Yes — under section 10b(4), no common carrier may 'engage in any unfair or unjustly discriminatory practice in the matter of rates or charges'.
8	**Sanction against rate discrimination**	No provisions	Yes — under section 10b.
9	**National flag operator provisions**	No provisions	No specific provisions. However, shipping between US ports is restricted to US flag vessels under section 27 of the *Merchant Marine Act of 1920* (commonly referred to as the Jones Act).
10	**Regulatory body**	Canadian Transport Agency (CTA)	Federal Maritime Commission
11	**Regulatory controls**		
11.1	*Public filing of agreements*	Required — every member of a conference must file, not later than the day on which the agreement becomes effective, a copy of every conference agreement and interconference agreement to which the member is a party.	Required — under section 5.
11.2	*Confidentiality*	Provided by the CTA upon filing of service contracts. However, member of a conference must make available to the public for inspection copies of all tariffs in force filed by those members.	No, except for supplementary information.
11.3	*Filing of tariffs*	Required — every member of a conference must file, not later than the day on which the tariff becomes effective, a copy of each tariff established by the conference. Every member of a conference must give notice in writing, to the CTA and affected shippers, of a tariff increase at least 30 days in advance of the increase.	Required — under section 8c(2), 'each [service] contract entered into … by an individual ocean common carrier or an agreement shall be filed confidentially with the Commission. Terms relating to: the origin and destination of port ranges; the commodity/ies involved; the minimum volume or portion; and the duration must be made available to the general public. All other terms, including tariff rates, may remain confidential.

(Continued next page)

Key Features		*Canada*	*United States*
11.4	*Examination of agreements*	No provisions	Yes — under section 6c, unless rejected by the Federal Maritime Commission, agreements become effective on the 45th day after filing or on the 30th day after notice of the filing is published in the Federal Register (which occurs within 7 days of filing).
11.5	*Enforcement powers*	A Commissioner (of Competition under the Competition Act) may on his own initiative, and on direction from the Minister of Industry, carry out an inquiry concerning the operations of any conference and the effect of conference practices on competition. After an investigation is complete, the CTA may make an order requiring, for example, relevant parties to remove the offending feature of an agreement or stop a certain practice. Fines may be imposed upon non-compliance.	Yes, including the power to make orders relating to violations. Suit may be brought in the US District Court by the FMC against substantially anti-competitive agreements.
11.6	*Conference type*	Closed	Open
12	**Complaint mechanism**	Yes — a complaint mechanism exists whereby a person may file a complaint with the CTA if it is believed that a conference agreement or action reduces competition and results in an unreasonable increase in price or reduction in service. The CTA must render a decision within 120 days.	Yes

Key Features		*European Community*	*New Zealand*
1	**Applicable legislation**	Treaty of Rome, with 'maritime transport package' of regulations passed 1986 (the key regulation being EC Council Regulation 4056/86) and subsequent additions (EC Council Regulation 479/92 and Commission Regulation 870/95) detailing application of the Treaty to this industry.	*Shipping Act 1987* — exempts outward shipping from Parts II (Restrictive Trade Practices) and IV (Price Control) of the *Commerce Act 1986*.
2	**Objectives (abbreviated)**	The purpose of the package is to 'ensure free and non-discriminatory access to cargoes for community shipowners and to secure fair competition on a commercial basis in the trades to, from and within the community, with due respect for the interests of shippers and ports'. The purpose of key Regulation 4056/86 is to ensure competition principles of the Treaty 'can be effectively applied to restrictive agreements or concerted practices and to abuses of a dominant position for the aim of leaving trades open and protecting the interests of transport users'.	(1) to promote and safeguard fair competition in outward shipping to the benefit of shippers and carriers, having regard to New Zealand's 'reliance on efficient, reliable and competitive shipping services', New Zealand's 'product diversification' and developments in international shipping; (2) to safeguard against abuse of a dominant position; (3) to discourage anti-competitive practices by carriers; (4) to encourage reasonable notice of impending changes to terms and conditions; (5) to encourage consultation and negotiation between shippers and carriers; and (6) to recognise that commercial relations between shippers and carriers should be self-regulating while there is satisfactory balance of advantages between the parties.
3	**Scope of jurisdiction**	Inward and outward	Outward

(Continued next page)

Key Features		*European Community*	*New Zealand*
4	**Key exemptions**		
4.1	*Carriers*		
4.1.1	*Conference arrangements*	Exempt — there is a block exemption from the prohibition of agreements, decisions and concerted practices restricting or distorting competition (prohibited under Article 85 of the Treaty) for liner conferences in Regulation 4056/86 (scope set out in Article 3) and for certain categories of consortia in Regulations 479/92 and 870/95. Regulation 479/92 does not exempt consortium price fixing. Accords do not fall within the conference definition.	Exempt, but collusive action leading a carrier to refrain from tendering to supply services is an 'unfair practice' (see below).
4.1.2	*Pooling arrangements*	Exempt	No provisions
4.1.3	*Negotiations with shippers*	Exempt	Exempt
4.1.4	*Loyalty agreements*	Exempt, subject to detailed conditions relating to content and consideration with shippers (Article 5 of Regulation 4056).	Exempt
4.1.5	*Collective agreement on door-to-door rates*	Not exempt — according to the interpretation made by the Commission, Regulation 4056/86 applies to port-to-port operations, whereas Regulation 1017/68 implementing competition rules to inland transport applies to the land leg of multimodal transport that also includes a sea leg. There are pending cases before the EC Court of Justice and Court of First Instance concerning this issue.	Not exempt — agreements between shipowners on common multimodal services are subject to antitrust laws.
4.2	*Shippers*		
4.2.1	*Negotiations with carriers*	Exempt	Exempt
4.2.2	*Loyalty agreements*	Exempt	Exempt

(Continued next page)

Key Features		*European Community*	*New Zealand*
5	**Carrier obligations / shipper powers**		
5.1	*Conferences*		
5.1.1	*Minimum levels of service*	Not specified	Not specified
5.1.2	*Negotiable shipping arrangements*	There is an obligation on ship operators to consult with shippers regarding general principles applying to rates, conditions and quality of services (Article 5 of Regulation 4056).	Not specified — however, negotiations may be required formally to take place in the event of a Ministerial direction following an inquiry into a suspected unfair practice that has or is likely to have a detrimental effect on the interests of any New Zealand shipper.
5.2	*Non-conference ocean carriers with substantial market power*	No provisions	The Act applies to 'any carrier or association of carriers'.
5.2.1	*Minimum levels of service*	No provisions	As above
5.2.2	*Negotiable shipping arrangements*	No provisions	As above
6	**Misuse of market power sanction**	Yes — Article 86 (abuse of a dominant position) of the Treaty of Rome applies. If the Commission finds a breach of Article 86 they may withdraw the benefit of the block exemption and take action to end the breach.	Any 'abuse of a dominant position' may be investigated by the Minister of Transport as a suspected unfair practice under section 4.
7	**Unfair pricing sanction**	Yes — under Regulation 4057/86.	No specific provision
8	**Sanction against rate discrimination**	Yes — Article 4 of Regulation 4056/86 makes the block exemption conditional upon there being no discrimination, unless economically justified, that would cause detriment to certain ports, transport users or carriers.	No specific provision

(Continued next page)

Key Features		*European Community*	*New Zealand*
9	**National flag operator provisions**	None, but Regulation 4058/86 is directed to safeguarding free access to cargoes by shipping companies of Member States.	Yes — the Minister of Transport may make regulations for the defence of New Zealand shipping or trading interests if the Minister is satisfied a foreign government or its agency has adopted or proposes to adopt any measure that damages or threatens to damage New Zealand shipping or trading interests, including any that may adversely affect the access of New Zealand national flag carriers to seaborne cargoes.
10	**Regulatory body**	Council of the European Commission. Regulations administered by DG IV (Competition) in cooperation with DG VII (Transport).	Minister of Transport, assisted by the Ministry of Transport and by qualified persons in the case of inquiries into unfair practices.
11	**Regulatory controls**		
11.1	*Public filing of agreements*	Not required — because a block exemption is provided.	Not required
11.2	*Confidentiality*	Not applicable because there is no filing requirement. However, the EC protects confidential information in investigations.	Not applicable because there is no filing arrangement.
11.3	*Filing of tariffs*	Not required	Not required — however, the Minister may direct this upon the outcome of an inquiry into an unfair practice.
11.4	*Examination of agreements*	Upon complaint	Upon complaint of an ‘unfair practice’.
11.5	*Enforcement powers*	Yes, including power by decision of the Commission to impose fines.	Yes — the Minister is allowed to make regulations for the defence of New Zealand shipping or trading interests.
11.6	*Conference type*	Closed	Closed
12	**Complaint mechanism**		Yes

G Case studies

G.1 Australia–South-East Asia

The Australia–South-East Asia trade links Australia with Indonesia, Malaysia, Singapore, Thailand and Vietnam. The trade is relatively well-balanced, with some 200 000 TEU northbound and 210 000 TEU southbound. Major northbound cargoes include meat, fruit and vegetables, dairy products, animal feed, cotton, photographic goods, aluminium and other metals.

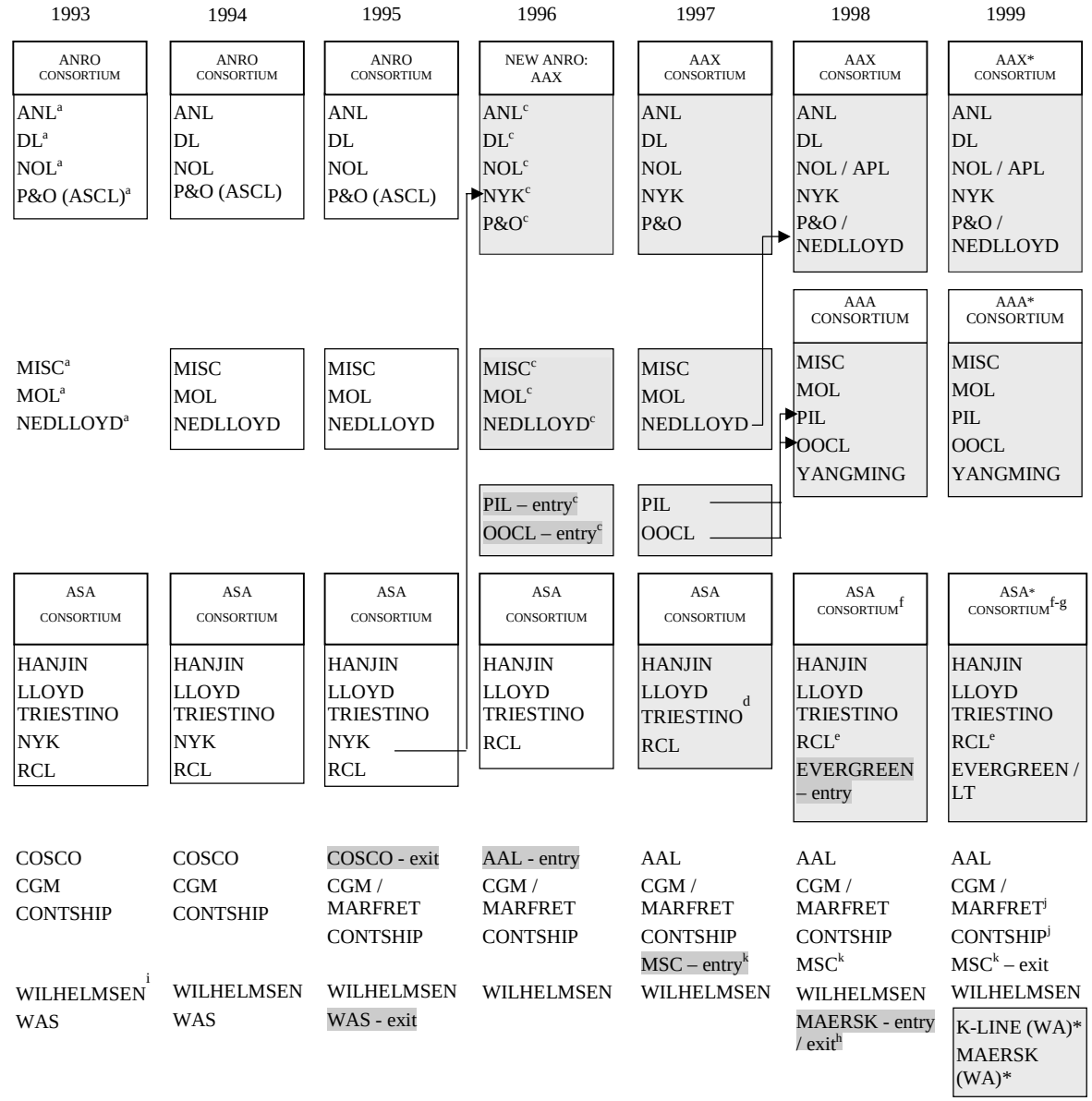
Vessels employed in the trade invariably call at Singapore and usually call at Port Kelang (Malaysia). Cargo shipped to other South-East Asian ports, including Jakarta, Bangkok and Ho Chi Minh City, is normally transhipped onto feeder vessels at Singapore. Singapore is a major hub for Australian transhipment cargoes routed to and from Europe and North America. Cargo shipped on vessels employed in the Australia–South-East Asia trade thus includes exports to and imports from South-East Asia (trade cargo) as well as cargo originating in or destined for Europe and North America (transhipment cargo). The trade has been highly competitive for some years. The Asian economic crisis, which coincided with changes in consortia membership and the introduction of new tonnage into the trade, intensified competition.

Lines servicing the South-East Asian trade

Major developments in the trade (see figure G.1) include:

- the breakdown of the Australia–South-East Asia Outward Shipping Conference in the northbound trade and its replacement by a Trade Facilitation (Discussion) Agreement;
- relatively frequent entries into and exits from the trade;
- the growing importance of Singapore as a transhipment hub for Australian trades, and the consequent growth in the volume of transhipment cargo handled by vessels employed in the trade; and

Figure G.1 **Lines servicing the Australia–South-East Asia trade, 1993–1999**φ



a Member lines of Australia–South-East Asia Outward Shipping Conference. **b** The Australia–South-East Asia Outward Shipping Conference disbanded in 1994. It was replaced by Australia–South-East Asia Shipping Forum. **c** December 1996 Australia–South-East Asia Trade Facilitation Agreement introduced. Member lines include ANL, DL, NOL, NYK, P&O, MISC, MOL, Nedlloyd, PIL, & OOCL. **d** Evergreen entered trade in early 1997 by slot chartering from Lloyd Triestino. Evergreen became a vessel provider in mid-1998, prior to purchasing Lloyd Triestino. **e** K-Line, Zim and Hanjin-Lloyd slot charter from RCL, but are not ASA members. **f** Zim slot charters from the AAA consortium (as well as from RCL). **g** Hyundai entered the trade in January 1999 by slot chartering from AAA. **h** Maersk started a fortnightly service between Singapore and eastern Australian ports in March 1998, only to end the service after six months. **i** Wilhelmsen's RTW service operates northbound only. **j** Contship/COM/Marfret RTW service operates northbound only. **k** MSC operated southbound only (from Singapore) from 1997 to April 1999. ***** TFG members. φ The shaded regions represent TFG lines.

Data source: Liner Shipping Services (sub. 10, att. C), *Daily Commercial News* (various issues), *Lloyd's List Daily Commercial News* (various issues).

- a stepping-up in the intensity of competition, associated not only with the expansion of incumbent lines, but also with the entry of new lines and a reduction in the volume of northbound cargo following the Asian financial crisis.

The Australia–South-East Asia Outward Shipping Conference's share of northbound cargo declined in the late 1980s and early 1990s — conference members carried 69 per cent of northbound cargo by value (65 per cent by volume) in 1991-92, compared with 82 per cent (74 per cent by volume) in 1983-84.[1]

Three consortia operated in the trade in 1993: the ANRO consortium included ANL, DL, NOL and P&O; a second grouping included MISC, NOL and Nedlloyd; while Hanjin, Lloyd Triestino, NYK and RCL comprised a third consortium, which operated outside the conference. Several lines operated services in their own right, including COSCO, CGM, Contship and Wilhelmsen.

The conference disbanded in 1994, being replaced by a short-lived (1994–97) discussion agreement — the Australia–South-East Asia Shipping Forum. Subsequently, a number of lines formed the Australia–South-East Asia Trade Facilitation Agreement, which was registered under Part X of the TPA. Trade Facilitation Agreement (TFG) members included the lines forming the 'new' ANRO,[2] together with the MISC/MOL/Nedlloyd consortium and new entrants to the trade, OOCL and PIL.

Both supply and demand side factors have contributed to the continuing destabilisation of the trade. On the supply side, the 1998 restructuring of consortia (see below), together with the fleet enhancement programs undertaken by the restructured consortia in an attempt to enhance their competitive advantage, including the introduction of larger vessels, led to a substantial increase in carrying capacity. On the demand side, the Asian financial crisis led to a substantial fall in northbound cargo at precisely the time that the new consortia were upgrading their services.

Substantial changes in consortia membership occurred in 1996 and 1998. These changes must be seen against a background of mergers, takeovers and shifts in strategic alliances within the global container shipping industry. For example, NYK left the ASA consortium in October 1996 to join its fellow Grand Alliance members

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1 ASEACON members included ANRO consortia members (ANL, DL, NOL, P&O) as well as MISC, MOL and Nedlloyd. A consortium comprising NYK, Hanjin, Lloyd Triestino and RCL, as well as independent lines including COSCO, CGM, Contship, Wilhelmsen, Zim and Southern Cross Lines provided non-conference competition. EAC and WA Stateships operated services between WA and South-East Asia.

2 Members of the 'new' ANRO included ANL, DL, NOL, NYK, and P&O.

in the 'new' ANRO or AAX consortium. Similarly, the merger of P&O and Nedlloyd meant that P&O Nedlloyd was a member of two of the three consortia operating in the Australia–South-East Asia trade — P&O was a member of the AAX consortium while Nedlloyd operated in partnership with MISC and NOL. P&O Nedlloyd's 1998 decision to focus solely on the AAX consortium led to a further restructuring of the Australia–South-East Asia trade — MISC and MOL joined with OOCL and PIL to form the AAA consortium. The entry of Evergreen into the ASA consortium was the final strategic play in the creation of the three consortia which exist in mid-1999.

The pattern of entries and exits suggest that the trade is highly contestable. Entries include Evergreen, Maersk, OOCL, PIL, and Australia Asia Line, while exits include COSCO, WA Stateships and Maersk's east coast (Australian) service.[3]

Transhipment

The growing importance of Singapore as a transhipment hub for Australian cargo plays a significant role in the competitive dynamics of the trade. Table G.1, based on Port of Singapore data, suggests that the volume of Australian cargo shipped through Singapore grew by 56 per cent between 1995 and 1997.

Table G.1 **Transhipment of Australian cargo through Singapore, 1995–97**[a]

	1995	*1996*	*1997*	*Growth rate 1995–97*
	TEU	TEU	TEU	%
Brisbane	25 700	30 300	44 100	72
Sydney	77 600	85 800	116 500	50
Melbourne	79 500	93 100	117 800	48
Fremantle	54 000	60 900	80 500	49
Australia	**264 000**	**306 900**	**410 600**	**56**

a Includes both southbound and northbound cargo. Note that Port of Singapore Authority data suggest transhipment levels are higher than those quoted by other sources.

Source: Port of Singapore Authority data quoted in *Daily Commercial News*, 16 March 1999.

3 Maersk continues to operate its WA service but closed its east coast service within six months of entering the trade.

Capacity

The carriage of cargo shipped to/from Europe and North America (transhipment cargo) as well as cargo shipped to/from South-East Asia (trade cargo) makes it difficult to determine the precise level of surplus capacity.

Nonetheless, it is evident that surplus capacity in the Australia–South-East Asia trade has increased both as a result of new entry and of the expansion of incumbent lines on the supply side, and the impact of the Asian crisis on the demand side. Estimates of the northbound capacity provided by TFG and non-TFG lines, assuming 100 per cent capacity utilisation, are shown in table G.2.

Table G.2 **Australia–South-East Asia: estimated northbound capacity, mid-1999**[a]

	Annual Capacity (TEU)		
	Dry	*Reefer*	*Total*
TFG Lines:			
AAX consortium	79 200	12 000	91 200
AAA consortium	86 400	21 600	108 000
ASA consortium	79 200	16 800	96 000
Maersk (WA Service)	7 200	7 200	14 400
K-Line (WA Service)	50 400	4 800	55 200
Total TFG Lines	*302 400*	*62 400*	*364 800*
Non-TFG Lines:			
CGM/Marfret/Contship (RTW service)	68 400	10 800	79 200
Wilhelmsen	48 000	3 600	51 600
PIL/MISC (Qld service)	19 200	4 800	24 000
Contship–Eagle	57 600	9 600	67 200
P&O Nedlloyd – Mediterranean service	40 800	7 200	48 000
Total non-TFG Lines	*234 000*	*36 000*	*270 000*
Total trade	**536 400**	**98 400**	**634 800**

a Assuming 52-week year, 100 per cent capacity utilisation. Calculations allow for 1999 entries to and exits from the trade and hence differ from table D.6 in appendix D.

Source: Liner Shipping Services (sub. 10, att. C, pp. 39–41).

According to table G.2, the theoretical northbound capacity (on a 100 per cent utilisation basis) amounts to over 630 000 TEU.[4] If it is assumed that vessels

4 These estimates do not allow for the fact that vessels carrying heavy or dense cargo may reach their load limit when carrying fewer TEU than their design capacity or for the fact that a regular, scheduled liner service, by it very nature, tends to operate at less than full capacity. Note also that some vessels employed in the Australia–South-East Asia trade serve other trades as well. For example, vessels employed in P&O Nedlloyd's Mediterranean service carry cargo from Australia and New Zealand to the Mediterranean alongside cargo from Australia–

operate at 75 per cent of capacity,[5] northbound capacity is approximately 470 000 TEU.

According to *Containerisation International*, 200 000 TEU were carried northbound and 210 000 TEU were carried southbound in the Australia–South-East Asia trade in 1998. These estimates include only 'trade cargo', that is, they relate solely to cargo destined for or originating in South-East Asia. The carriage of transhipment cargo on vessels employed in the Australia–South-East Asia trade makes it difficult to determine the true level of surplus capacity in the trade. *Containerisation International* estimates that approximately 70 per cent of the cargo volume is trade cargo and the remaining 30 per cent non-trade or transhipment cargo.[6] If this is correct, northbound cargo is 286 000 TEU and southbound 300 000 TEU. This suggests the Australia–South-East Asia trade is substantially overtonnaged. Vessels currently employed have the capacity to carry double the cargo volume currently on offer. (*Containerisation International*, April 1999, p. 61)

Freight rates

Rates in the Australia–South-East Asia trade have fallen substantially since the mid-1990s. In early 1995 it cost approximately A$1400 to ship a twenty foot container northbound from Sydney or Melbourne to Singapore. By early 1997, prior to the Asian financial crisis, freight rates had declined to A$1000–1100 per TEU, and had fallen further to A$900 per TEU by September1997. Freight rates fell further following the onset of the Asian financial crisis. By October 1998 rates were as low as A$550 per TEU. (DCN, 5 September 1997; 1 October 1998)

Despite announced rate increases during 1999, freight rates have continued to fall — to as low as $250–300 per TEU on the southbound trade.

Service levels

Vessels operated by TFG and non-TFG lines serve a range of ports in Australia and South-East Asia (see table G.3). Most vessels employed in this trade call at Fremantle and then sail to east coast ports. Lines operating in this way often

South-East Asia. Such voyage patterns imply that the space available for Australia–South-East Asia cargo is limited.

5 Given that vessels operate according to a pre-arranged schedule, and that vessels may be fully loaded when carrying fewer containers than their theoretical design capacity, vessels typically operate at 75–80 per cent capacity in practice.

6 There is some discrepancy between *Containerisation International* estimates and Port of Singapore Authority estimates presented in table G.1.

centralise Brisbane cargoes to Sydney rather than incur the cost of direct call. Several lines handle Tasmanian cargoes via Melbourne.

All lines call at Singapore, the pre-eminent hub port in South-East Asia. Port Kelang also receives relatively frequent direct calls. Other South-East Asian ports are typically served by feeder services from Singapore. As noted in the Australia–North and East Asia trade study, a dense network of transhipment services operates within Asia. Trade flows between Australia and many South-East Asian ports are not large enough to warrant frequent direct services, and transhipment via Singapore offers an efficient alternative.

Table G.3 **Port coverage by TFG and non-TFG lines: Australia to South-East Asia, mid-1999**

	Australia						*South-East Asia*					
	Adelaide	*Brisbane*	*Fremantle*	*Melbourne*	*Sydney*	*Tasmania*	*Jakarta*	*Singapore*	*Port Kelang*	*Bangkok*	*Laem Chebang*	*Surabaya*
TFG:												
AAX	D	T	D	D	D	D	T	D	D	T	T	T
AAA	D	T	D	D	D	D	T	D	D	T	T	T
ASA	T	D	D	D	D	T	T	D	T	T	T	T
Maersk (WA)	–	–	D	–	–	–	T	D	T	T	T	T
K-Line	–	–	D	–	–	–	T	D	T	T	T	T
Non-TFG:												
CGM/Marfret/Cont.	T	D	–	D	D	T	D	D	T	T	T	T
Wilhelmsen	D	D	D	D	D	–	D	D	T	–	–	–
PIL/MISC (Q'land)	–	D	–	–	–	–	–	D	T	T	T	T
Contship–Eagle	D	–	D	D	D	T	T	D	T	T	T	T
P&O Nedlloyd (Med.)	–	–	D	D	D	–	–	D	–	–	–	–

Source: Lloyd's List Daily Commercial News (various).

Table G.4 compares transit times between Melbourne and South-East Asian ports by TFG and non-TFG lines.

The ability to provide the fastest transit between ports is important when marketing a liner service. Shipping lines in the Australia–South-East Asia trade have not only introduced new, faster tonnage but have rationalised port calls so as to improve transit times. As with the Australia–North-East Asia trade, lines tend to specialise in sub-markets — one line will arrange its port calls so as to offer the fastest transit between, say, Melbourne and Singapore, whilst another aims to provide the fastest transit from Sydney to Singapore.

Whilst non-TFG lines offer faster transit times from Melbourne to Singapore, TFG lines offer more frequent services. Hence the elapsed time (time on wharf plus time at sea) may be shorter for freight shipped by TFG lines.

Table G.4 **Comparison of transit times from Melbourne to South-East Asia by TFG and non-TFG lines, 1998**[a]

Line/consortium	*Jakarta*[b]	*Singapore*	*Port Kelang*	*Penang*[c]	*Bangkok*[c]
TFG Lines:					
ASA	–	12	–	–	–
AAA	21	13	12	15	18
AAX	18	14	15	20	21
Maersk (WA)	11[d]	6[d]	7[d]	8[d]	11[d]
K-Line (WA)	4[d]	6[d]	–	–	–
Non-TFG lines:					
PIL/MISC (QLD)	–	–	12	13	–
CGM/Marfret/ Contship	8	11	–	–	–
Contship-Eagle	–	10	–	–	–
Wilhelmsen	–	10	–	–	–
P&O Nedlloyd Med. Service	–	10	–	–	–

a Average transit times based on Melbourne sailings advertised in the *Daily Commercial News*, December 1998. **b** Some lines serve Jakarta by feeder vessel from Singapore. **c** Penang and Bangkok are normally served by feeder vessel from Singapore. **d** ex. Fremantle.

Source: Liner Shipping Services (sub. 10, att. C, p. 42); *Daily Commercial News*, December 1998.

Summary

Overall, the Australia–South-East Asia trade has been characterised by intense competition driven by the growth of transhipment services via Asian hub ports, especially Singapore, coupled with the impact of the South-East Asian economic downturn. As a result, freight rates have fallen to unsustainably low levels. Because of the nature of the trade (it is comparatively short and a direct as well as a 'feeder' route) the distinction between conference (TFG) and independent operators, in terms of service, is less pronounced than on other Australian trades. Nonetheless, TFG members offer higher reefer capacities and more comprehensive port coverage than non-TFG operators.

G.2 Australia–North and East Asia

Vessels employed on the Australia–North and East Asia trade normally serve one of two loops, either Australia–East Asia (China, Hong Kong, the Philippines and Taiwan), or Australia–North Asia (Japan, South Korea, North Korea and Russia).

Whilst the trade is relatively small by northern hemisphere standards — a recent estimate suggested that the 1999 northbound volume will total approximately 280 000 TEU — it is relatively well balanced.[7] Japan accounts for about a third of northbound containerised cargo, Hong Kong for about 20 per cent (some part of which is destined for China), with Taiwan, Korea and direct shipments to China each accounting for 10–15 per cent. Northbound cargoes include meat, dairy products, iron and steel, aluminium, wool, and cotton.

Lines servicing the North and East Asia trade

Major developments in the Australia–North and East Asia trade include:

- relatively frequent entry and exit by non-conference lines;
- intensifying competition from lines offering transhipment services via Singapore;
- the adoption of a more aggressive stance by independent lines such as MSC, leading to competitive responses by conference and non-conference lines alike;
- intensification of competition over time, especially since 1998 when the Asian financial crisis affected demand and the entry or threat of entry by non-conference carriers, including transhipment operators, led to substantial overtonnaging and a decline in freight rates; and
- the formation of a Discussion Agreement (Australia–North and East Asia Trade Facilitation Agreement), involving both conference and non-conference lines, in an attempt to stabilise a trade characterised by a growing gap between supply and demand.

Membership of the Australia Northbound Shipping Conference (ANSCON) has been relatively stable during the 1990s.[8] Only two lines have left ANSCON — Knutsen Line exiting the trade in the mid 1990s, while Cho Yang chose to operate independently following the ending of its joint service and marketing arrangements with ANL and K-Line (see figure G.2). Zim, formerly operating outside the conference, joined ANSCON in 1994 when it began a joint service with OOCL.

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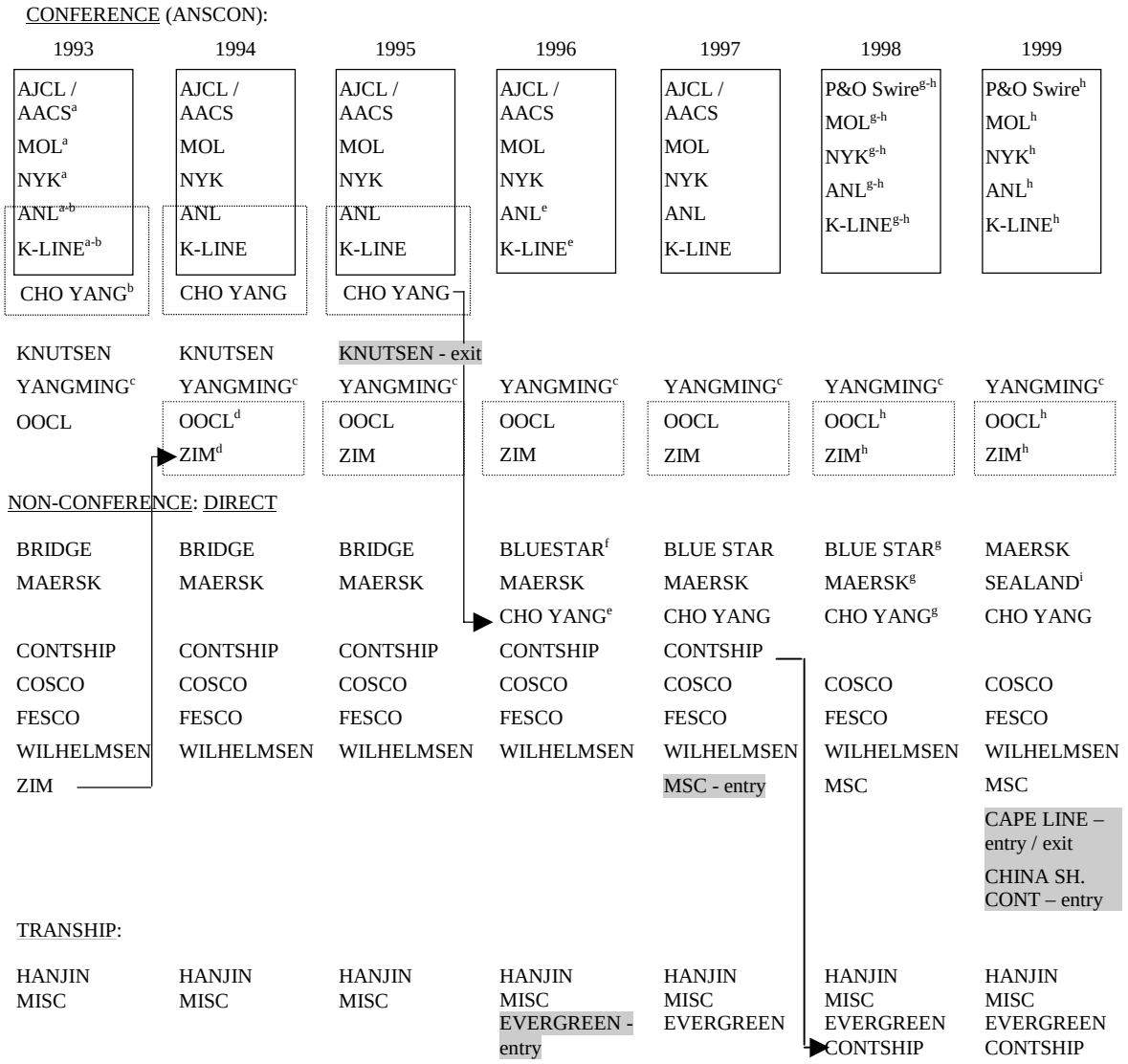
7 Compare the forecast 1999 lifting of 280 000 TEU in the northbound trade (East Australia–North and East Asia), with the forecast shipment of 5 million TEU in the Far East–Europe trade (see Smith 1999).

8 ANL, K-Line, MOL, NYK, OOCL, P&O Swire (AJCL, AACS), and Yangming have been members throughout the period 1993–99. Yangming, which has not operated a vessel in the trade for some years, slot charters from ANL, K-Line, MOL, NYK, P&O Swire, which operate a consortium within the conference.

Figure G.2 **Lines servicing the Australia–North and East Asia trade, 1993–1999**



a AJCL/AACS, MOL, NYK, ANL & K-LINE operate as a consortium within ANSCON. **b** ANL, K-LINE & CHO YANG had a joint service/marketing agreement to Japan (ESS) and Korea (KASS). **c** Yangming, which has not operated a vessel in the trade for some years, slot charters from the AJCL/AACS, MOL, NYK, ANL, K-LINE consortium. **d** In late 1994 ZIM entered into a joint service with OOCL, simultaneously joining ANSCON. **e** January 1996. End of joint service/marketing relationship between ANL, K-LINE and CHO YANG. **f** Bridge Line purchased by Blue Star in 1990 renamed Blue Star (Asia) Line in 1996. Maersk purchased EAC in 1990. **g** In 1998 P&O Nedlloyd acquired Blue Star (Asia) and with others, formed the Australia–North-East Asia Trade Facilitation Agreement. Members include the ANSCON Lines, Blue Star, Maersk and Cho Yang. This Agreement is registered under Part X. MSC has applied to join the Agreement. **h** The ANSCON Members entered into a slot chartering agreement with OOCL & ZIM in 1998. **i** Late 1998 changes to Blue Star, Maersk and Cho Yang consortium. Maersk decided to offer its own service. Cho Yang and Sealand now slot charter from Maersk, Blue Star from ANSCON members.

Data source: Liner Shipping Services (sub. 10, att. C), *Daily Commercial News* (various issues), *Lloyd's List Daily Commercial News* (various issues).

Non-conference lines offer both direct and transhipment services. There have been relatively frequent entries and exits by non-conference lines over the period 1993 to 1999. COSCO, FESCO and Wilhelmsen,[9] operating direct services, have served the trade continuously. Blue Star (Asia), Maersk and Cho Yang operated as a consortium outside the conference from 1996 to 1998. MSC joined the trade as an independent in 1997. (*Containerisation International*, April 1999, pp. 57–61)

Transhipment

Several non-conference lines offer transhipment services via South-East Asia, especially Singapore. Transhipment operators Hanjin and MISC were joined by Evergreen in 1996, while Contship switched from direct to transhipment services in 1998.

Competition in the Australia–North and East Asia trade has intensified since 1997 as a result of new entry and the competitive response to new entry on the part of incumbent lines. Entries and exits since 1997 include:

- Maersk, formerly in a consortium with Blue Star and Cho Yang, commenced a weekly, fixed day service in 1998;[10]
- Sea-Land entered the trade via slot charter in late 1998, taking 125 forty foot slots on Maersk vessels northbound and southbound (DCN, 23 November 1998);
- China Shipping Container Lines entered the trade in March 1999 (DCN, 31 March 1999);
- the ASA consortium (Evergreen, Hanjin, Lloyd Triestino and Regional Container Lines) entered the trade in July 1999 by redeploying vessels formerly operating one of its two Australia–South-East Asian loops; and
- Cape Line operated twelve voyages over the period March–May 1999 before exiting, the impending arrival of the ASA consortium being cited as the major factor in the decision to quit (LLDCN, 19 May 1999).[11]

9 Wilhelmsen's ro-ro vessels operate a northbound only service from Eastern Australia–Asia as one leg of a complex voyage pattern (Europe–North America–Australasia–East Asia–North America–Europe).

10 Former Maersk consortium partner Cho Yang now slot charters from Maersk, while Blue Star, now owned by P&O Nedlloyd, slot charters from ANSCON.

11 Intense competition also led the Taiwanese carrier Kien Hung to drop the Australian leg from its proposed Asia–Australia–Latin America–Asia service.

Capacity

As noted above, there has been a substantial increase in the number of carriers serving the trade. Further, some of the incumbent lines have introduced additional and/or larger vessels. Main developments include:

- Maersk (which has slot charter arrangements with Sea-land and Cho Yang) has introduced a weekly service, deploying five 2000 TEU in place of four 1500–2000 TEU vessels;
- MSC has realigned its service, omitting the South-East Asian leg and concentrating on northbound and southbound voyages between Australia and North and East Asia;
- China Shipping Container Lines has introduced a weekly service operated by seven 1000 TEU con-bulker vessels;
- the ASA consortium has entered the trade, offering a weekly service operated by five 1100–1200 TEU vessels; and
- ANSCON members have increased fleet size from 11 to 15 vessels and moved from a two-loop to a three-loop service. (Smith 1999)[12]

New entry and the expansion of incumbent lines on the supply side, together with the impact of the Asian financial crisis on the demand side, has led to an increase in the level of surplus capacity in the Australia–North and East Asia trade. Estimates of northbound capacity provided by both conference and non-conference lines, assuming 100 per cent capacity utilisation, are shown in table G.5.

As shown in table G.5, the theoretical capacity (on a 100 per cent utilisation basis) of northbound direct voyages exceeds 700 000 TEU. If it is assumed that vessels employed in the northbound trade operate at 75 per cent of capacity, total northbound capacity is approximately 570 000 TEU (see footnote 5).

This figure does not include the capacity provided by transhipment operators, such as Hanjin and MISC, offering services to North and East Asia via Singapore. Whilst precise details of transhipment volumes are unavailable (see chapter 2, section 2.2, *Transhipment and landbridging*), it is clear that transhipment operators have the

12 From January 1996 ANSCON operated separate services to East Asia (five vessels) and North Asia (six vessels). In its 1999 restructuring, ANSCON has increased the number of vessels employed in the Australia–East and North Asia trades from 11 to 15 and added a third loop. Loop 1 covers Keelung, Kaohsiung, Hong Kong, Shekou, Sydney, Melbourne, Brisbane, and Keelung. Loop 2 covers Yokohama, Yokkaichi, Nagoya, Osaka, Hakata or Busan (alternative voyages), Sydney (discharge), Melbourne, Adelaide, Sydney (loading), Brisbane and Yokohama. Loop 3 covers Osaka, Busan, Qingdao, Shanghai, Keelung, Sydney, Melbourne, Brisbane and Osaka. (LLDCN, 4 June 1999).

ability to add substantially to the capacity provided by direct services if it is profitable for them to do so.

Table G.5 **Australia–North and East Asia: estimated northbound capacity, mid-1999**[a]

	Monthly Capacity			*Annual Capacity*		
	Dry	*Reefer*	*Total*	*Dry*	*Reefer*	*Total*
Conference:						
Japan/Korea	6 600	2 700	9 300	79 800	32 700	112 500
East Asia	8 400	900	9 300	101 200	11 100	112 300
WA service	4 300	700	5 000	51 700	8 700	60 400
Total conference	*19 300*	*4 300*	*23 600*	*232 700*	*52 500*	*285 200*
Non-conference direct:						
China Shipping Cont.	na	na	4 300	na	na	52 000
COSCO - East Asia	5 400	200	5 600	65 800	2 800	68 600
- Japan/Korea	3 200	400	3 600	38 300	5 200	43 500
FESCO	5 000	400	5 400	61 000	4 200	65 200
MSC	6 300	600	6 900	76 300	7 300	83 600
Maersk	4 300	1 300	5 600	52 000	15 600	67 600
Wilhelmsen	3 500	300	3 800	42 000	2 900	44 900
ASA	na	na	5 200	na	na	62 400
Total non-conference direct			*40 400*			*487 800*
Non-conference transhipment:						
Hanjin	See Australia–South-East Asia case study					
MISC	See Australia–South-East Asia case study					

a Assuming a 52-week year and 100 per cent capacity utilisation. Calculations allow for mid 1999 entries to and exits from the trade and hence differ from table D.4 in appendix D. **na** Data not available.

Source: Liner Shipping Services (sub. 10, att. C, pp. 25–27).

The volume of northbound and southbound cargo shipped between Australia–North and East Asia is shown in table G.6.

Table G.6 **Australia–North and East Asia: estimated cargo volume (TEU)** [a]

Year	*Northbound*	*Southbound*
1999	280 000	na
1998[b]	260 000	290 000
1995	211 000	185 000
1994	199 000	169 000

a Estimates exclude transhipment cargo. **b** *Lloyd's List Daily Commercial News* (30 April 1999, pp. 6–7) estimated 1998 volumes of 290 000 TEU northbound and 320 000 TEU southbound. **na** Data not available.

Sources: Smith (1999); *Containerisation International*, April 1999, p. 63; *Daily Commercial News*, 27 March 1995.

The estimates of northbound and southbound cargoes exclude cargo carried to/from Australia–North and East Asia for on-carriage to Europe or North America. Tables G.5 and G.6 suggest that the trade is substantially overtonnaged — 1998 northbound capacity (570 000 TEU, assuming 75 per cent vessel utilisation) is roughly twice as large as the northbound cargo volume (260 000 TEU in 1998). Transhipment cargo[13] is unlikely to account for more than a small proportion of the surplus capacity. Note also that the Commission's estimates of overtonnaging do not allow for capacity provided by lines offering transhipment services to and from North and East Asia via Singapore.

Freight rates

Freight rates in the Australia–North and East Asia trade declined significantly during the late 1990s. However, as late as 1995, average rates to and from Japan actually rose (see chapter 2, figures 2.5 and 2.6). *Containerisation International* has noted that the route was stable and profitable until MSC entered the trade in 1997. Certainly dry cargo rates were reported to have fallen in 1997 from over US$1200 to US$1100. (*Containerisation International*, April 1999, p. 61)

Tim Smith, P&O Nedlloyd General Manager for Australia–North and East Asia services, has noted that:

> Average rates increased in 1994 and 1995, but then fell back again in 1996 and 1997. The rate of reduction accelerated in 1998, and has continued in 1999 … average freight rates in the trade [as of July 1999] are only 78 per cent of their 1996 level … (Smith 1999)

In early 1999 northbound rates from Australia–Hong Kong fell to A$450–550 per TEU, while rates from Australia–Shanghai/Dalien have been quoted at A$800 per TEU and transhipment operators are reported to have quoted rates of $550 per TEU between Australia–North and East Asia (via Singapore) (LLDCN, 30 April 1999).

Service levels

Table G.7 suggests that a range of ports in North and East Asia are served directly by conference and non-conference lines. Other Asian ports are served by transhipment. As mentioned previously, there is a dense pattern of feeder services within Asia.

13 Notably Australia–Europe cargo transhipped at Kaohsiung and Australia–west coast North America cargo transhipped at Yokohama.

Within Australia, vessels normally call at Melbourne, Sydney and Brisbane. Adelaide may be served directly or via centralisation to Melbourne, while Bell Bay, Burnie and Devonport cargoes are centralised to Melbourne. Table G.7 shows port calls by conference and independent lines in Australia and Japan, distinguishing between direct and transhipment services.

Table G.7 **Port coverage by conference and independent lines: Australia to Japan/Korea, 1999**

	Australia					*Japan*			*Korea*			
	Adelaide	*Brisbane*	*Fremantle*	*Melbourne*	*Sydney*	*Tasmania*	*Hakata*	*Kobe*	*Nagoya*	*Osaka*	*Yokohama*	*Busan*
Conference:	D/T[a]	D	D	D	D	T	D	–	D	D	D	D
Non-conference:												
Maersk	T	D	D[b]	D	D	T	D	–	–	D	D	D
COSCO	T	D	–	T	D	T	–	D	–	–	D	D
Hanjin	T	D	D	D	D	–	T[d]	T[d]	T[d]	T[d]	T[d]	T[d]
MSC	T	D	T	D	D	–	–	–	–	D	D	D
MISC	D	T[c]	D	D	D	D	T[d]	T[d]	T[d]	T[d]	T[d]	T[d]

a One of ANSCON's three loops calls at Adelaide. **b** Operated by Maersk's West Australian service, with cargo transhipped at Singapore. **c** MISC Brisbane cargo centralised via Sydney. **d** Cargo transhipped via Singapore. **D** Direct service. **T** Indirect service (transhipment or centralisation).

Source: Lloyd's List Daily Commercial News (various).

In general, as noted in chapter 5, the conference lines as a whole provide better quality service than individual non-conference lines in terms of overall frequency of service, port coverage and reefer and dry cargo capacity.

Table G.8 compares transit times between Australian and Japanese ports by conference and independent lines.

As noted above, shipping lines in the Australia–North and East Asia trade have restructured their services, rationalising port calls so as to provide faster transits. The ability to provide the fastest transit between ports is important in marketing a liner shipping service. As in the Australia–South-East Asia trade, lines tend to specialise in sub-markets — whilst ANSCON provides the fastest service from Sydney to Yokohama, Maersk offers the fastest service from Melbourne to Yokohama.

Table G.8 **Comparison of transit times by conference and independent lines: Australia to Japan/Korea, March 1999**

	Yokohama	*Yokkaichi*	*Nagoya*	*Osaka/Kobe*	*Busan*
Ex Sydney:					
ANSCON (Loop 2)	12	14	14	16	18
ANSCON (Loop 3)	–	–	–	15	17
COSCO	27	–	–	29	31
Maersk/CY/SL	17	–	–	19	21
MSC	18	–	–	20	22
Ex Melbourne:					
ANSCON (Loop 2)	14	16	16	18	20
ANSCON (Loop 3)				12	14
Maersk/CY/SL	13	–	–	15	17
MSC	14	–	–	16	18
Ex Brisbane:					
ANSCON (Loop 2)	9	11	11	13	15
ANSCON (Loop 3)				9	11
Maersk/CY/SL	9	–	–	11	13
MSC	9	–	–	11	13

Source: Liner Shipping Services (sub. 10, att. C, p. 31); Liner Shipping Services (pers. comm., 19 July 1999).

Summary

As with all other Australian liner trades, competition on the Australia–North and East Asia trade has been intense, and amplified by the impact of competition from transhipment via South-East Asia and the South-East Asian economic downturn.

The conference, ANSCON, continues to provide better quality service in terms of overall reefer capacity and foreign ports of call.

G.3 Australia–Europe

The Australia–Europe trade includes Mediterranean countries as well as countries in North Europe. It is one of Australia's longest liner trade routes, and is in total the smallest of Australia's major liner trades. However, there is a significant trade imbalance on the route. *Lloyd's List Daily Commercial News* recently reported that southbound volumes from Europe were around 240 000 TEU in 1998, while northbound trade was 85 000 TEU (LLDCN, 28 May 1999, pp. 1, 8). According to *Lloyd's List Daily Commercial News*, 'the much smaller northbound trade has benefited positively from the Asian crisis … Total trade grew by 20 per cent [in 1998] to 85 000 TEU', although growth has reportedly eased in 1999 (LLDCN, 28 May 1999, p. 8).

Major exports to Europe include: wool, sheep and lambs; beverages; meat and meat preparations; vegetables and fruit; raw hides and skins; leather and leather manufactures; and cotton. Major imports from Europe include: paper, paperboard and articles of paper; non-metallic mineral manufactures; chemicals; machinery, iron and steel; miscellaneous manufactured articles; and plastics.

Liner exports and imports on the Australia–Europe trade were relatively stable in both tonnage and value terms from 1994-95 to 1996-97, but, as noted above, increased in 1997-98 (see table G.9). Australian exports to Europe also tend to be of higher unit value than Australian exports on average — in 1997-98, 9 per cent of Australia's exports by volume were destined for Europe, representing 15 per cent of Australia's exports by value.

Table G.9 **Liner exports and imports to/from Europe, 1994-95 to 1997-98**

		1994-95	*1995-96*	*1996-97*	*1997-98*
Liner exports (tonnes)	Europe	905 238	1 174 622	1 002 905	1 621 187
	% of total Aust. export tonnage	7.9	9.0	6.3	8.9
Liner exports ($000)	Europe	3 059 151	3 627 125	3 303 989	4 972 362
	% of total Aust. export value	15.1	13.7	11.7	14.8
Liner imports (tonnes)	Europe	2 305 760	2 250 431	2 264 293	2 955 052
	% of total Aust. import tonnage	24.2	24.1	22.1	24.5
Liner imports ($000)	Europe	9 878 400	10 687 701	9 379 057	12 734 274
	% of total Aust. import value	27.4	27.5	24.4	26.9

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

The conference share of Australia's liner export tonnage to Europe has declined from 61 per cent in 1989-90 to 48 per cent in 1997-98, and the conference share of import tonnage from Europe has declined from 71 per cent in 1989-90 to 54 per cent in 1997-98 (see appendix C, tables C.11 to C.14). Conferences also tend to carry slightly higher value cargo than non-conference operators in this trade, although their share by value also has declined over the period 1989-90 to 1997-98 — from 70 to 52 per cent for exports and 76 to 65 per cent for imports.

Lines servicing the Europe trade

The Australia–Europe trade is currently serviced by the Australia to Europe Liner Association (AELA) and a number of non-conference lines. MSC is the only non-conference line currently competing with the AELA on direct services from Australia to Europe. However a number of lines offer transhipment services. Liner Shipping Services suggested 'these transhipment operators have grown as

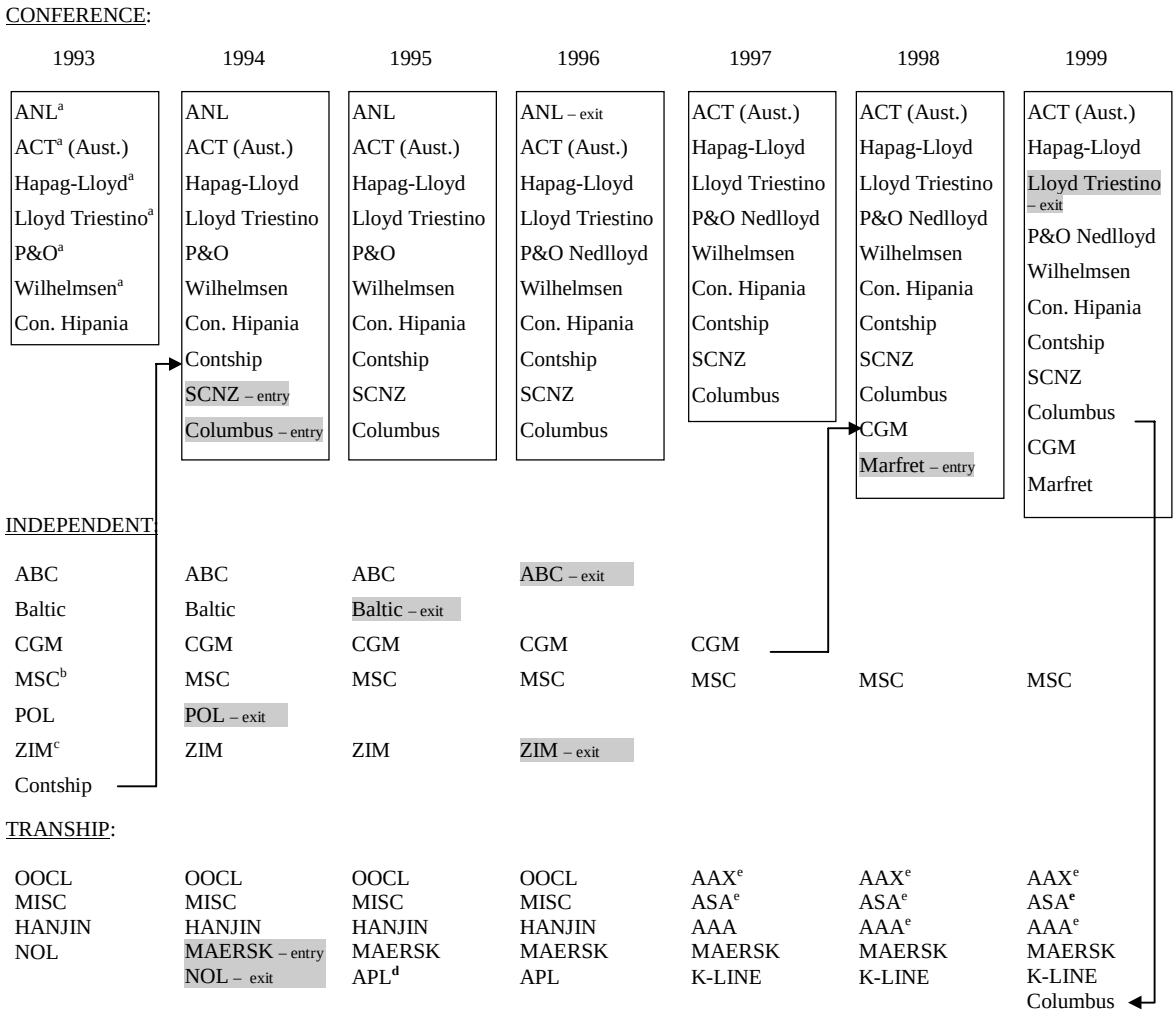
competitors over the period under review, especially southbound' (LSS sub. 10, att. C, p. 1).

In 1993, member lines of the Australia to Europe Shipping Conference were members of the ANZECS consortium (namely ANL, Associated Container Transport (Australia), Hapag-Lloyd, Lloyd Triestino and P&O Containers) plus Consortium Hispania Lines and Wilhelmsen Lines. Non-conference lines servicing the Europe trade in 1993 were ABC Container Line, Baltic Shipping Company, Compagnie Generale Maritime, Contship-Eagle, MSC and Zim Line.

Since 1993, ANL, Columbus Line and Lloyd Triestino have exited the conference, and CGM, Marfret, Contship and Shipping Corporation of New Zealand have joined the conference. ABC Container Line has gone into liquidation, the Baltic Shipping Company and Polish Ocean Lines no longer trade to/from Australia, and Zim Line, with only one vessel currently (as a member of ANSCON) offers very limited competition (LSS, sub. 10, att. C, p. 1).

In 1999, member shipping lines of the AELA are Associated Container Transportation (Australia) Ltd, Compagnie Generale Maritime, Compagnie Maritime Marfret, Consortium Hispania Lines, Contship Container Lines, Hapag-Lloyd Container Line, P&O Nedlloyd, Shipping Corporation of New Zealand and Wilhelmsen Lines. The lines servicing the Australia–Europe trade over the period 1993 to 1999 are summarised in figure G.3.

Figure G.3 **Lines servicing the Australia–Europe trade, 1993–1999**



a Member of the ANZECS consortium. **b** Direct to Northern Europe, transhipment to Mediterranean. **c** Transhipment to Northern Europe, direct to Mediterranean. **d** APL bought out NOL in 1995. **e** ASX, AAA and ASA are consortia operating in the South-East Asia trade. AAX consortium members are ANL, APL, DJL, NYK and PONL (NYK carry very little cargo to/from Europe); ASA consortium members are Hanjin, Lloyd Triestino, Evergreen and RCL; AAA consortium members are MISC, MOL, OOCL, PIL, plus non-vessel operators ZIM and YML.

Data sources: Liner Shipping Services (sub. 10, att. C, p. 1); Liner Shipping Services (pers. comm., 9 August 1999).

Transhipment

A large number of carriers can offer transhipment services in the Australia–Europe trade, although Maersk, APL, OOCL and Evergreen/Lloyd Triestino are considered to be 'dedicated' transhipment operators. MISC also offers transhipment slots through OOCL, and Sea-Land through Maersk (LLDCN, 28 May 1999, p. 10).

Estimates of volumes of cargo transhipped on the Australia–Europe trade are available from several sources. While these estimates vary, they all show that transhipment, particularly via Asia, has increased significantly.

Lloyd's List Daily Commercial News has reported that almost 30 per cent, or 70 000 TEU, of the southbound Europe–Australia trade currently is transhipped through Asian ports, up from 5 per cent in 1996 (LLDCN, 28 May 1999, p. 1). Liner Shipping Services estimates that over the last five years transhipment in the southbound trade has grown rapidly and could now account for around 15 per cent of the total trade, while transhipment on the northbound trade to Europe via South-East Asia (primarily Singapore) has grown to about 10 per cent of the total trade (sub. 10, att. C, p. 1). Estimates of southbound transhipment volumes on the Europe–Australia trade provided by the UK office of Liner Shipping Services suggest transhipment volumes currently are around 26 per cent (see table G.10).

Table G.10 **Estimates of transhipment on the Europe–Australia southbound trade, 1994 to 1998**

Year	*Trade volume*	*Volume transhipped*	*Percentage of trade volume transhipped*
	TEU	TEU	%
1994	182 000	10 000	5
1995	188 000	15 000	8
1996	193 000	25 000	13
1997	211 000	40 000	19
1998	230 000	60 000	26

Source: Liner Shipping Services pers. comm., 13 August 1999.

Official estimates of the volume of cargo transhipped on the Europe–Australia trade are available from the International Cargo Statistics database provided by the Bureau of Transport Economics (BTE) (see table G.11). While these estimates suggest that the level of transhipment has increased, they are lower in absolute terms than the estimates reported above. The difference may be partly reconciled by the fact that the level of transhipment of Australian cargoes has reportedly increased significantly in recent years (data from the BTE is available only up to 1997-98). There are also issues of definition of transhipment and the inclusion of significant volumes of charter cargo from regional ports, which would not be transhipped, as liner cargo in the BTE database.

Nevertheless, the official data show the growth of transhipment via Asia, supporting anecdotal evidence. In 1997-98, 59 per cent of transhipped imports from Europe to Australia were transhipped via South-East Asia, up from 33 per cent in 1989-90. In

1997-98, 48 per cent of transhipped exports from Australia to Europe were transhipped via South-East Asia, up from 10 per cent in 1989-90. (ICSD 1999)

Table G.11 **Share of total liner export and import tonnage to/from Europe which is transhipped, 1989-90 to 1997-98 (per cent)**[a]

Excluding cargo transhipped within Europe

	1989-90	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Exports to Europe transhipped	1.0	0.2	0.9	1.9	4.7
Total Australian liner exports transhipped	2.5	1.0	1.4	2.1	3.0
Imports from Europe transhipped	1.5	1.6	1.6	2.3	3.4
Total Australian liner imports transhipped	2.3	2.4	2.3	3.0	3.3

a This data is different to the transhipment data presented in chapter 2 and appendix C, which is share of liner export and import tonnage transhipped by region in which transhipment occurs.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Capacity

The annual capacity of direct conference services on the Australia–Europe trade has increased by 75 per cent since 1993, while the annual capacity of direct non-conference services has declined by 25 per cent (see table G.12). This is largely due to the fact that the number of conference members has increased, while the number of non-conference lines offering direct services has decreased (although the capacity of MSC has increased significantly since 1993). The annual capacity of direct conference services is now more than twice that of direct non-conference services. Significant transhipment capacity to Europe also is available, although inevitably not all capacity on transhipment vessels is available for Australia–Europe cargo. Overall, significant excess capacity appears to exist in the Australia–Europe trade relative to trade volumes. This is particularly the case northbound, whereas southbound capacity is somewhat tighter.

However, it is important to note that it is not possible to estimate accurately the extent of excess capacity on the Australia–Europe trade without considering the New Zealand–Europe trade. According to Liner Shipping Services, in terms of volume, priorities for the direct liner service are Europe to Australia, New Zealand to Europe and then Australia to Europe (sub. 10, att. C, p. 1).

Table G.12 **Estimated annual conference and non-conference liner capacity of direct services on northbound Australia–Europe trade, 1993 to 1999 (TEU)**

	1993	*1999*
Conference[a]	158 640	278 378
Non-conference	161 844	120 438
Total capacity	320 484	398 815

a Excluding Wilhelmsen round-the-world ro-ro service, which had an annual capacity of 47 768 TEU in 1993 and 46 368 TEU in 1999.

Source: Liner Shipping Services (sub. 10, att. C, p. 14); DTRS Liner Service Sheets.

Service levels

The conference as a whole offers more frequent services to Europe than its competitor for direct services, MSC. MSC offers a weekly fixed day direct service from Australia to Europe (with transhipment to the Mediterranean). The AELA offers three fortnightly fixed day direct services to Europe and the Mediterranean, as well as a Contship/CGM/Marfret direct service every 11 days. AELA member Wilhelmsen Lines also offers a round-the-world ro-ro service with destinations in Europe and the Mediterranean every 15 days.

The AELA offers a significantly wider range of foreign direct ports of call than MSC. Australian and foreign ports of call for lines servicing the Australia–Europe trade are detailed in tables D.9, D.10, D.12 and D.13 of appendix D.

Average actual and scheduled transit times of regular direct liner shipping services to Europe for the period September 1998 to February 1999 from major Australian ports are presented in table G.13. These data also give an indication of the relative reliability of direct services operating on the Australia–Europe trade.

Where both the conference and MSC offer direct services, the conference offers shorter transit times in most cases. The exception is Adelaide to UK and Belgium/Netherlands, where MSC transit times are considerably shorter. Further details of transit times for lines servicing the Australia–Europe trade are presented in table D.13 of appendix D.

Where both conference and non-conference direct services are available, the difference between actual and published transit times tends to be smaller for non-conference services. However, conference services tend to be more likely to arrive early.

Table G.13 **Transit times of regular direct liner shipping services to Europe, September 1998 to February 1999**[a]

Conference/Line	*Transit times (days)*					
	N. Italy	*S. France*	*Spain*	*UK*	*Belgium/ Netherlands*	*Germany*
From Fremantle						
AELA A (Eastabout)	–	–	–	50.6 (53)	49.5 (52)	55.2 (57)
AELA B (Med.)	25.8 (23)	28.3 (26)	29.8 (27)	–	–	–
AELA C (Eagle)	–	–	–	30.5 (31)	29.5 (30)	32.7 (33)
MSC	–	–	–	33.2 (33)	30.6 (31)	–
From Adelaide						
AELA A (Eastabout)	–	–	–	46.4 (49)	45.3 (48)	51.1 (53)
AELA C (Eagle)[b]	40.0 (28)	–	–	46.7 (35)	45.6 (34)	48.8 (37)
MSC	–	–	–	37.3 (37)	34.7 (35)	–
From Melbourne						
AELA A (Eastabout)	–	–	–	44.2 (46)	43.2 (45)	48.9 (50)
AELA B (Med.)	30.5 (27)	33.0 (30)	34.5 (31)	–	–	–
AELA C (Eagle)	28.6 (30)	–	–	35.3 (37)	34.2 (36)	37.5 (39)
Contship/CGM/Marfret	27.5 (29)	29.4 (30)	–	35.4 (36)	36.5 (37)	–
MSC	–	–	–	39.7 (39)	37.1 (37)	–
From Sydney						
AELA A (Eastabout)	–	–	–	40.5 (43)	39.4 (42)	45.2 (47)
AELA B (Med.)	45.4 (39)	47.8 (42)	49.4 (43)	–	–	–
AELA C (Eagle)	37.6 (38)	–	–	44.3 (45)	43.2 (44)	46.5 (47)
Contship/CGM/Marfret	30.8 (32)	32.5 (33)	–	38.4 (39)	39.6 (40)	–
MSC	–	–	–	42.9 (43)	40.2 (41)	–
From Brisbane						
Contship/CGM/Marfret	33.8 (35)	35.7 (36)	–	41.7 (42)	42.7 (43)	–

a Average actual port to port transit times, followed by scheduled transit times in brackets. **b** A second Adelaide call was added to the Contship–Eagle service during the period, hence the discrepancy between actual and scheduled transit times.

Source: LLDCN, 28 May 1999, p. 10.

Freight rates

As discussed in chapter 5, section 5.1, freight rates for conference and non-conference liner shipping services have declined significantly on most Australian trade routes, including the Australia–Europe trade, over the last decade. From 1989 to 1998, nominal freight rate indices for the Australia–Europe trade declined from 100 to 70.7 northbound, and 100 to 72.6 southbound (LSS, sub. 10, p. 12). This decline in freight rates occurred fairly steadily, particularly northbound,

over the period. Indices of northbound and southbound freight rates in the Australia–Europe trade are presented in figures 2.5 and 2.6 of chapter 2.[14]

While negotiated rates usually are confidential, freight rates in the Australia–Europe trade are cited periodically in industry and other publications. For example, the Wool Commodity Group negotiated 1998-99 season freight rates in the European trade on behalf of wool exporters and European importers of A$1900 per TEU with Maersk for a transhipment service via Singapore, and rates for direct services of A$2122 per TEU and A$2055 per TEU with the AELA conference and MSC respectively (LLDCN, 24 July 1998, p. 1).

Eller (1993, quoted in BTCE 1995, p. 25) cited freight rates for a number of conference and non-conference direct and transhipment services in the Europe to Australia trade in the range US$1400–1650 per TEU (for ocean freight) and US$1527–1809 per TEU (terminal-to-terminal) in November 1993. By 1998, rates of US$900 per TEU were being cited (DCN, 31 August 1998). Various issues of Containerisation International, DCN and Lloyd's Maritime cited freight rates for Europe–Australia of A$1900–2200 per TEU in 1993 and A$1300 per TEU in 1998, representing a fall in excess of 30 per cent.

In late 1998, the AELA announced a general rate increase effective from 1 February 1999 of $250 per twenty foot container and $300 per forty foot container for dry cargo, and $350 per twenty foot container and $550 per forty foot container for reefer cargo. At that time, a subsequent increase from 1 July 1999 of $50 per twenty foot container and $100 per forty foot container for dry cargo only was also announced. These rate increases were announced against a backdrop of rapidly falling southbound rates, which historically have subsidised the thinner northbound trade, and a steady decline in northbound rates. (DCN, 3 December 1998) The February rate increase met with mixed results in the marketplace, and the full rate increase was apparently applied only to a small volume of cargo (LSS pers. comm., 6 August 1999). Furthermore, the proposed July rate increase was not implemented.

Summary

The Australia–Europe trade is a relatively thin trade, although volumes on the southbound trade are significant. Volumes of cargo on the trade have remained fairly stable over the past few years.

14 These freight rate indices are estimates of actual terminal-to-terminal rates averaged over all reefer and dry cargoes. Northbound indices are based on freight rates in Australian dollars. Southbound indices are based on freight rates in US dollars.

Although a number of lines have entered and exited the Australia–Europe trade, the number of lines servicing the trade has been relatively stable in recent years. While the number of direct non-conference operators has declined since 1993, the number of transhipment operators has increased.

MSC and the transhipment operators on the route are providing substantial competition to the conference. MSC reportedly has a large share of the direct market, and the volume of cargo transhipped has increased significantly in the last few years, particularly southbound. As a result, conference shares of imports and exports have declined to around 50 per cent in 1997-98, despite conference capacity having increased on the Australia–Europe trade in recent years.

While there appears to be some surplus capacity in the Australia–Europe trade, surplus capacity on the southbound Australia–Europe trade is not as pronounced as that on the northbound trade.

Conferences tend to offer a better quality service on the Australia–Europe trade than non-conference operators offering direct services in terms of ports of call, reliability and transit times. Freight rates on the trade have fallen steadily and significantly over the last decade.

G.4 Australia–North America

Australia's exports to North America using liner shipping totalled around 1.3 million tonnes in 1997-98 with a value of $3.6 billion. This represented about 7 per cent of Australia's total liner exports by weight and nearly 11 per cent by value. Services are provided to a large number of ports on the east and west coasts of the United States and Canada and to the Gulf of Mexico.

The North American shipping conferences carried 46 per cent of this volume representing over 60 per cent of the value of liner exports to North America, a similar share to that carried by conferences in all Australian trades. This compares to estimated conference shares of about 46 per cent and 73 per cent in 1989-90.[15] However, if iron and steel and mineral sands (both very heavy products largely carried by non-conference operators) are excluded, the conference share by weight in 1997-98 is a good deal higher at 54 per cent and of value 65 per cent. The comparable estimates for 1989-90 were 59 percent and 75 per cent respectively.

15 All estimates of conference shares are based on BTE data derived from unpublished ABS international cargo statistics.

The conference share of total exports to all destinations using liner shipping in 1997-98 was 45 per cent by weight and 56 per cent by value. In 1988-89 the comparable shares were 58 per cent and 67 per cent respectively. Hence the North American conference's share of trade was similar to the average for all outward routes in 1997-98. However, while the conference share to North America over the last ten years has been fairly stable, conference shares have been declining on most other outward trades.

Capacity data for direct services in table D.8 indicates that there is significant independently-owned dry container capacity on the outward trade (around 40 per cent of total capacity), but that only about 10 per cent of direct reefer capacity is provided by independent operators.

The single-largest liner export to North America is meat products (30 per cent share by weight when iron and steel are excluded) and the conference share of this trade was close to 80 per cent for both weight and value in 1997-98. This was well up from the 60 per cent conference share in 1988-89. Over 40 per cent of the weight of cargo carried to North America by conferences is meat products, with refrigerated capacity representing about one third of available monthly conference capacity (in TEUs).

The other major export commodities carried to North America by liner shipping were agricultural and mineral products including vegetables and fruit, dairy products, beverages and iron and steel. Major imports using liner shipping included chemicals, cork and wood, fertilisers, machinery, paper and paperboard and transport equipment.

Trade growth to North America over the last 10 years has been only moderate and has fallen as a share of Australia's exports carried by liner shipping, from over 13 per cent by volume and close to 12 per cent by value in 1988-89 to 7 per cent and 11 per cent respectively in 1997-98.

The trade from Australia to North America is characterised by a particularly high requirement for refrigerated containers (reefers) and a significant imbalance of the need for these containers between the northbound and southbound legs. This imbalance will tend to add to the freight rates charged for products requiring the more expensive reefer containers because costs can only be defrayed on one leg.

On the inward trade from North America, conference and non-conference liner services carried almost equal cargo weight in 1997-98. However, as with exports, conferences tended to carry the more valuable cargoes and had a 60 per cent share of the value of liner imports. There is a much lower requirement for reefer containers on the inward trade. Shippers of dry cargo are reluctant to use

'non-refrigerated' reefers because of the risk of damage if the refrigeration is accidentally turned on. Despite price incentives, many of these containers return empty.

In 1997-98, conferences carried 49 per cent of the weight of imports carried by liner shipping from North America, representing 61 per cent of the value of these imports. This was considerably lower than the 60 per cent and 75 per cent respectively in 1989-90.

Table G.14 **Liner exports and imports to/from the United States, 1994-95 to 1997-98**

		1994-95	*1995-96*	*1996-97*	*1997-98*
Liner exports (tonnes)	United States	1 008 222	1 006 297	1 139 875	1 303 988
	% of total Aust. export tonnage	8.8	7.7	7.2	7.2
Liner exports (A$000)	United States	2 275 959	2 346 381	2 312 463	3 598 705
	% of total Aust. export value	9.4	8.9	8.2	10.7
Liner imports (tonnes)	United States	1 490 846	1 833 592	2 312 376	2 189 838
	% of total Aust. import tonnage	15.6	19.7	22.6	18.1
Liner imports (A$000)	United States	6 905 950	8 608 470	9 816 270	10 393 455
	% of total Aust. import value	19.1	22.1	25.6	22.0

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

Lines servicing the North American trade

There are two shipping conferences involved in outward liner shipping services between Australia and the USA and Canada — the Australia–United States Container Line Association (AUSCLA) and the Australia–Canada Container Line Association (ACCLA). Both conferences comprise ANZDL (now owned by CP Ships), Columbus Line — each with about 40 per cent of monthly conference capacity (in TEUs) — and P&O Nedlloyd with around 20 per cent of monthly conference capacity. These same lines made up the conference in 1993.[16] ANZDL operates a weekly service to the west coast of North America with landbridging services across North America. Columbus and P&O Nedlloyd combine to provide joint weekly services to both the west and east coasts.

Because of regulatory requirements in the United States, the AUSCLA is an open conference, but nonetheless its membership has not changed (except for one

16 Blue Star Lines which was a conference member in 1993 was taken over by P&O Nedlloyd in 1998.

takeover) for ten years. This suggests that there were not excess profits significant enough to attract new members to the conference.

However, there have been significant changes in capacity shares of individual conference lines between 1993 and 1999. ANZDL increased its share of average monthly conference capacity leaving Australia from around 27 per cent to nearly 39 per cent, while Columbus Line's share rose from 36 per cent to 40 per cent. P&O Nedlloyd's share (previously held by Blue Star Line) fell from over 37 per cent to around 21 per cent from 1993 to 1999.[17] While slot swapping between conference members means that capacity does not equate exactly with market share, it is a good indicator of changes in a carrier's market penetration. Such large changes in capacity shares are suggestive of competition between conference members.

In addition to these conferences, there have been various discussion agreements on the North American trade. ANZDL originally had been an independent on the US trade but had been in a discussion agreement with the conference members before joining the conference in the late 1980s. When Nedlloyd was an independent on this line it was part of the Australia–United States Discussion Agreement. Currently this agreement comprises conference members and the joint venturers Cool Carriers and Scaldis (C&S).[18] Although remaining a forum for possible discussions between the members, this discussion agreement has not been active in recent years.

FESCO is the main independent carrier providing weekly, direct conventional services on the outward trade to the west coast of North America. C&S provide a (long) seasonal service from North Queensland and Cool Carriers has a shorter seasonal service (using chartered ships) shipping fruit from South Australia. Wilhelmsen offers a monthly ro-ro direct service to the east coast of the United States, which also carries some containers. Its market share is less than the bigger transhippers, but its container capacity has recently been expanded. In addition, BHP Transport (IMTL) operates bulk carriers and several small container vessels, but possesses only limited spare, largely non-refrigerated, container capacity.

Neither Wilhelmsen nor BHP Transport could be seen as having provided significant competition to conferences or large independent lines. However, the

17 Based on Liner Shipping Services (sub. 10, att. C, pp. 43, 47). Average monthly capacity is the total capacity of a company's ships on a trade divided by the number of ships and then multiplied by the average number of sailings per month. Unless all services are direct to the US, this capacity figure will not represent available capacity out of Australia for North America, as space will be needed to load cargo from intermediate countries such as New Zealand.

18 Cool Carriers and Scaldis operate a seasonal and irregular joint service from North Queensland (and occasionally Brisbane) to Philadelphia using refrigerated ships. These ships only operate on the northbound trade. In other countries these companies operate separately.

existence of experienced carriers at the fringes of the trade further increases contestabilty. Expansion can be relatively easy for such operators as indicated by Wilhelmsen's recent increase in container capacity on the North American trade (LLDCN, 16 July 1999).

In recent years there have been a number of changes in the non-conference lines operating direct services on the North American trade. The ABC Container Line which offered a direct service approximately every 3 weeks went into liquidation in 1995. Nedlloyd, which had been a relatively small non-conference operator, merged with P&O in 1996 and that group took over Blue Star Line in 1998, thereby becoming part of the conference. However, FESCO entered the trade in 1994 providing a weekly direct service to the west coast of North America.

In discussing competition in liner shipping from Australia, BHP expressed some reservation regarding the extent of competition from independents on the North American trade:

> I guess the one that does spring to mind is the North American trade where independent lines have been in and out of the trade, depending on their own profitability. They've been there but maybe not as consistently as other trades. (trans., p. 113)

The conference members on the southbound trade are the same as those on the northbound leg, with all members providing an essentially out and back service to and from North America. In addition to FESCO, Contship provides a non-conference direct service from North America.[19]

The main lines servicing the Australia–North America trade over the period 1993 to 1999 are summarised in figure G.3.

[19] Contship is owned by CP ships which also controls the conference operator ANZDL.

Figure G.4 **Lines servicing the Australian–North America trade, 1993–1999**

	1993	1994	1995	1996	1997	1998	1999
CONFERENCE:							
	ANZDL Blue Star Columbus	ANZDL Blue Star Columbus	ANZDL Blue Star Columbus	ANZDL Blue Star Columbus	ANZDL Blue Star Columbus	ANZDL Blue Star Columbus	ANZDL P&O Nedlloyd[a] Columbus
INDEPENDENT:							
	Wilhelmsen	Wilhelmsen	Wilhelmsen	Wilhelmsen	Wilhelmsen	Wilhelmsen	Wilhelmsen
	Cool Carriers	Cool Carriers	Cool Carriers / Scaldis[b]	Cool Carriers / Scaldis	Cool Carriers / Scaldis	Cool Carriers / Scaldis	Cool Carriers / Scaldis
	BHP/IMT[c]	BHP/IMT	BHP/IMT	BHP/IMT	BHP/IMT	BHP/IMT	BHP/IMT
		FESCO – entry	FESCO	FESCO	FESCO	FESCO	FESCO
	Nedlloyd	Nedlloyd	Nedlloyd	Nedlloyd	P&O Nedlloyd[d]	P&O Nedlloyd	
	ABC	ABC	ABC – exit				
TRANSHIP[e]:							
	MISC MSC	MISC MSC	MISC MSC	MISC MSC	MISC MSC Maersk – entry	MISC MSC Maersk	MISC MSC Maersk

a P&O Nedlloyd takeover Blue Star and join the conference. **b** Cool Carriers/Scaldis is a member of the Australia–United States Discussion Agreement along with the three conference members. The two operators have a joint operation trading seasonal services from Queensland, while Cool Carriers have a separate seasonal service from South Australia. **c** BHP/IMT provides a bulk and breakbulk service with a small amount of container capacity. **d** P&O and Nedlloyd merge. **e** Excludes transhippers with small volumes.

Data source: Liner Shipping Services (sub. 10, att. C, pp. 43–47); LLDCN (various issues).

Transhipment

The other independent carriers on the North American trade provide transhipment services. The major lines (more than one per cent market share) are Maersk and MSC/Safbank. Around 10 per cent of containers to and from Australia and New Zealand to the US west coast are reported to be transhipped (LLDCN, 16 July 1999).

These services provide important potential competition to conferences, particularly for non-refrigerated cargoes. However, they are likely to be somewhat less of a competitive threat for products requiring refrigeration, due to shipper concerns regarding possible risks to product during the transhipment phase. Nonetheless, *Lloyd's List Daily Commercial News* (July 16, 1999) reports that Maersk has achieved as much as 4 per cent of the reefer market to the US. Liner Shipping

Services (sub. 10, Attachment C) has indicated that other small transhippers include COSCO, OOCL and NYK. COSCO is unlikely to develop as a significant transhipper in this trade as under United States maritime regulations it is declared a government owned shipping service. This places COSCO at a considerable competitive disadvantage as it is required to notify any changes in rates 30 days in advance.

Table G.15 shows a growing share of exports and imports on the North American trade being transhipped. However, as is the case on the European trade the levels of transhipment indicated by official data are somewhat lower than suggested by anecdotal evidence from the shipping industry. Given the strong growth trend in transhipment over the past five years, the official data for 1998-99 may be closer to industry perceptions of current transhipment levels.

Table G.15 **Share of total liner export and import tonnage to/from North America which is transhipped, 1989-90 to 1997-98 (per cent)**[a]

Excluding cargo transhipped within North America

	1989-90	*1991-92*	*1993-94*	*1995-96*	*1997-98*
Exports to North America transhipped	1.1	2.6	0.6	1.6	2.2
Total Australian liner exports transhipped	2.5	1.0	1.4	2.1	3.0
Imports from North America transhipped	3.1	3.3	2.9	3.4	4.2
Total Australian liner imports transhipped	2.3	2.4	2.3	3.0	3.3

a This data is different to the transhipment data presented in chapter 2 and appendix C, which is share of liner export and import tonnage transhipped by region in which transhipment occurs.

Source: Bureau of Transport Economics, International Cargo Statistics Database (accessed April 1999).

The volume of liner shipping trade southbound is roughly one third greater than northbound. This imbalance creates openings for additional carriers on the southbound leg. Liner Shipping Services observed (trans., p. 8) that the southbound trade from North America had a particularly large number of transhipment operators.

Capacity

Annual conference capacity has expanded by around 45 per cent since 1993, broadly in line with the growth in trade tonnage. Current non-conference regular direct capacity is about 30 per cent of total direct conference and non-conference capacity. Two seasonal services in the reefer trade, for which capacity data are not available, add significantly to this non-conference share.

Data for non-conference capacity in 1993 were not available. However, the fairly constant share of trade volume held by independents suggests that their capacity has increased in similar proportion to that of the conference.

Table G.16 **Estimated annual conference and non-conference liner container capacity of direct services on northbound Australia–North America trade, 1993 and 1999 ('000 TEU)**

	1993	*1999*
Conference	127	185
Non-conference[a]	na	81
Total capacity	na	266

[a] Excludes C&S seasonal palletised reefer service and Cool Carriers seasonal service from South Australia using chartered ships.

Source: Liner Shipping Services (sub. 10, att. C, p. 14); DTRS Liner Service Sheets.

Table D.8 shows the very large outward capacity of the major operators offering transhipment services to North America. However, only a proportion of that capacity will be available for North American cargoes.

Freight rates

As with other trades, there have been significant falls in freight rates on the outward route to North America over the past decade. Discussions with participants indicate particularly large falls in freight rates for dairy products when compared to rate changes for New Zealand dairy products and for Australian meat exports. Refrigerated rates for meat products have also fallen somewhat from levels that shippers considered high. Liner Shipping Services (sub. 10, p. 13) indicated that freight rates for bulk pack meat in cartons in 1997 and 1998 were around A$5600 per container. This was 25 per cent below 1993 rates, although about 15 to 20 per cent above those achieved during a period of fierce competition in 1994.

Freight rates for mixed cargoes have declined by around 30 per cent since 1993, those for wool and household goods have halved while rates for wine have fallen by 70 per cent. Appendix D (tables D. 21 and D. 22) provides more detail.

One cause of somewhat higher freight rates in the North American trades is the high price of stevedoring in the United States. Liner Shipping Services (trans., p. 8) observed that terminal handling charges for meat in major US ports are close to A$850, compared to charges in Australian ports of about A$250. In addition, for refrigerated cargoes to the United States, conferences have often quoted rates including inland transport. These have involved cross subsidies between different origins and destinations. Liner Shipping Services indicated (trans., p. 9) that around

25 per cent of meat exports required further transport to the United States mid-west, costing over A$1500 per container. Recent indications are that these cross subsidies are being removed with shippers being offered a blue water rate with different add-on costs for different destinations within North America.

The United States maritime regulations have had an important impact on operations on the outward trade to North America. In particular the requirement that all rate agreements be publicly available appears to have limited within-conference competition (chiselling) although they may have limited differences in rates charged to small and large shippers.

Amendments repealing this requirement from May 1999 are likely to see greater internal pressure on conference rates. The Managing Director of Columbus Lines (a member of the conference to North America) observed:

> We no longer know what P&O quotes, they don't know what we quote and we battle for 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 short period of time and we still have to learn to live with these because it goes straight into margins which are not there. (trans., p. 9)

While a good deal of this decline may represent a move away from rates including inland transport in the United States, it is likely also to indicate more intense competition among conference members now that rates actually charged to individual customers may be kept confidential. Initially, such adjustments to a new regulatory environment may generate freight rates which are not sustainable in the long term.

Service levels

The North American conference lines service Sydney, Melbourne, Brisbane and Adelaide. They call at a wide range of east and west coast ports in the United States. Non-conference operators cover the same Australian ports as the conference but no single carrier covers both sides of North America. MSC/Safbank provide a transhipment service also stopping at Fremantle. Transit times of major direct service independents appear to be similar to those of the conference.

Discussions with shippers of refrigerated products indicated that the northbound North American conference provided very good service but had been relatively inflexible in negotiating terms and conditions. Particularly for reefer cargoes, this high level of service appears to have been a strong factor favouring the conference.

Summary

The outward trade to North America has fewer carriers, both conference and non-conference, than most other trades. The conference has three members, and there is one independent providing a weekly direct service and two other specialist carriers offering container services. In addition, independent seasonal services operate from Queensland and South Australia. There are two main transhipment services together with a number of other major lines currently carrying only small volumes of exports for transhipment.

The non-conference share of the trade is indicative of a particularly competitive environment for dry cargoes. Conference share of reefer trade is much higher. This would appear to reflect shippers' preferences for the reliability and service level provided by the North American conference. Nonetheless, independents operating direct services provide over 10 per cent of northbound reefer capacity and independent transhipment services may have around 5 per cent. There have been several occasions when independents have made incursions into the conference share of reefer cargoes but shippers have tended to return to using the conference because of the importance of high quality service for refrigerated products.

The presence of greater transhipment opportunities on the southbound trade together with a very limited reefer requirement suggests a particularly competitive environment on the inward trade.

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