



5 August, 1999

Dr Neil Byron  
Commissioner  
Productivity Commission  
Liner Shipping Part X Inquiry  
LB2 Collins St East  
MELBOURNE VIC 8003

Dear Dr Byron,

**Review of Part X of the Trade Practices Act**

You will recall that during the public hearings relating to the above enquiry held in Sydney on 28 July, LSS was requested to respond on a number of the issues raised. We will also be taking the opportunity in this response to elaborate on a few of the points we made during those public hearings.

Firstly, in relation to the National Competition Policy Report dated August 1993, you will recall that LSS stated that the operation of Part X to a significant extent matches the four basic parts of the concept of competition as set out in the Issues Paper circulated as part of that Competition Policy Review, and page 6 of the LSS main submission refers to the relationship between those four basic parts and Part X. In addition, attached is a copy of the agreed principles for a National Competition Policy as set out in the final report, page 17, and again it is suggested that Part X matches up well against those agreed principles. There is clearly a high level of competition currently prevailing, the public interest is defined as being the interests of Australia's liner exporters, there is no differentiation in terms of business ownership, it is clearly a transparent assessment process given the exercise of countervailing power by shippers; it is an open, integrated market and is less complex and administratively burdensome than alternative regimes of regulation.

LSS was requested to clarify the basis of the freight rate comparisons outlined on page 12 of the LSS main submission, and these rates are based on estimates of the average actual rates incorporating all surcharges applicable and would be an average of both dry and refrigerated cargo rates. They are not the public tariff rates. Whilst they are the best estimates that can be made, it is no longer possible to derive a weighted average of actual rates in the marketplace, as such data is no longer readily available. It could also be mentioned that the freight rate index for the main reefer product moving in the Australia-USA trade, i.e. bulk packed meat in cartons, covers both West

and East Coasts of the USA, and I will revert shortly on the information sought on the other North American freight rates.

### **THCs for Refrigerated Cargoes**

The question was asked whether THCs for refrigerated cargo in the inwards trades in Australia are higher than for dry cargo. Terminals normally charge extra for connection/disconnection of reefer containers and extra storage charges can apply after the three day free storage period. In a number of cases this is reflected in higher THCs, as set out below in relation to the North and East Asian trade, but in relation to Fremantle, for example, there are no additional costs but the rate for a 40 ft. container is considerably higher than for a 20 ft. container. It will be recalled that these rates are approximately 80 percent of the actual stevedoring costs.

TRADE			BRISBANE	SYDNEY	MELBOURNE	ADELAIDE	FREMANTLE
			\$	\$	\$	\$	\$
Japan/Korea to Australia	Dry	TEU	169.00	169.00	169.00	203.00	157.00
		FEU	173.00	173.00	173.00	207.00	255.00
	Reefer	TEU	264.00	264.00	264.00	363.00	157.00
		FEU	268.00	268.00	268.00	367.00	255.00
East Asia to Australia	Dry	TEU	187.00	185.00	178.00	207.00	157.00
		FEU	191.00	189.00	182.00	221.00	255.00
	Reefer	TEU	245.00	236.00	243.00	207.00	157.00
		FEU	249.00	240.00	247.00	221.00	255.00

### **Exemptions and Intermodalism**

We would also like to make some additional comments regarding intermodalism. Attached is an extract from a 1996 report by the Federal Maritime Commission Bureau of Economics and Agreement Analysis Division on Alliances which, for example, refers to the benefits of alliance-wide container sharing. Interestingly, the Bureau noted that such agreements had longer time horizons of around ten years compared to two or three years more commonly associated with other vessel sharing arrangements. In addition, we have attached a copy of a submission by the European wool buyers, Interlaine, to Directorate IV of the EU Commission on the issue of collectively allowing Lines to set Decentralised Zone Charges (DZCs) in Europe. Also attached is a copy of a letter from the Department of Transport in Canberra on the same issue. Meat exporters have also had some firm views in this respect, and it may be worthwhile for the Commission to discuss this issue with both meat and wool exporters.

There are a number of cases where shippers contract with groups of Lines to provide services to/from terminals. For example, a common charge often applies across Bass Strait and to/from Adelaide, where there are no direct services or infrequent direct

services. It is recommended that exemptions apply to the collective setting of charges intermodally where there is an agreement between a shipper(s) and groups of Lines, but remove the exemption where no such agreement exists. This would appear to cover the likely concerns of shippers, and as far as the carriers are concerned reinforce the through-contractual arrangement when negotiated between Lines and customers on a collective basis. If there were to be even greater rationalisation of port calls in the future, this would become even more important.

If it was decided to remove the exemption for the collective setting of inland haulage charges; the question was raised how could this be achieved in terms of amending Section 10.14(1) which limits the exemption from the prohibition on common pricing and collusion activities in Section 45 and 47 to:

- (a) the parts of the service that consist of the transport of cargo by sea; and
- (b) activities that take place outside Australia.

One concept would be to limit the exemption to terminal-to-terminal movement (if there was no agreement between carriers and shippers) with the definition of the terminal incorporating container yards and depots. The reason for this is that Equipment Handover Charges have been collectively set by Conferences since the beginning of containerisation and they relate to the lift-on or lift-off charge in the container yard or depot in terms of receiving back empties or collecting empties for the export trade. In addition, it is proposed, in the Sydney region, for example to develop both road and rail intermodal terminals outside the traditional container terminal, which would receive bulk runs from the container terminal to increase its productivity and efficiency as well as significantly enlarging the terminal capacity immediately adjacent to the berth face. In terms of the contract between the carrier(s) and the stevedore, there would be an extension of its performance from the terminal gate to the intermodal facility.

### **Collective Setting of Terminal Handling Charges**

It is considered that it would be technically very difficult to separate out the collective setting and charging of Terminal Handling Charges. Whilst the end price remains competitive in the marketplace, and as mentioned previously this is expected to continue in the foreseeable future, then the argument that Lines should not be allowed to collectively show on a freight invoice a Terminal Handling Charge is significantly undermined. The majority of APSA members have in the past supported the system of Port Pricing Additionals (PPAs), and the Department of Transport and Regional Services apparently does not have the same concern with PPAs as it does with THCs. Yet limiting the exemption to exclude the collective setting of Terminal Handling Charges would obviously flow-on to denying the Lines the right to collectively set PPAs.

As mentioned previously, Section 10.14(1) without sub-section (2) denies exemption for the application of liner terms. In other words, by restricting the exemption to the bluewater, Lines collectively could only agree rates on a free-in or free-out basis, which at present only applies to certain bulk ship or charter operations. Exporters have strongly been of the view in the past that Lines should have the clear exemption

to quote terminal-to-terminal rates. It should also be remembered that THC's apply in the ports of almost all of Australia's trading partners; having collectively been set in many cases by groups of carriers. The Commission is urged to reject the request that the regulatory system seek to specify which prices can be collectively negotiated and those which cannot, at least when the container is part of a through-movement to a terminal or container yard/depot.

In terms of allowing the collective negotiation of stevedoring contracts, it is recommended that a specific provision be included to that effect under Section 10.14.

It is worth noting that if THC's were set individually, and not collectively, they would be removed from the Part X negotiating process, including the THC's negotiated with APSA at destination. Furthermore, as Consortium member Lines often have the same terminal costs for the reasons explained previously, it would follow that there would be common THC's even when there was no agreement to charge the same THC.

### **Other Issues**

There was a brief discussion regarding Loyalty Agreements, but it should be noted that in Part X these really cover Service Contracts and not Loyalty Agreements as originally defined, for example, in the 1984 US Shipping Act, as the distinction in respect of Loyalty Agreements included an immediate or deferred rebate.

The question was raised in respect of importers (or a nationally designated importer body) negotiating land-based charges in Australia whether a prerequisite would be the requirement to register inwards Agreements or arrangements in Australia. It is recommended that members of any inward Conference (Conference being defined in the same manner as outwards Conferences in Part X) seeking to apply collectively inland charges in Australia would be required to register with the Registrar of Liner Shipping that they were party to such an Agreement and specifying the relevant Part X Agent which, in nearly all cases, would already exist on the registry of Part X Agents. This application would be supported by a statutory declaration, as is normally the case.

In relation to rates of return/profitability, we have asked our member Lines to respond direct to the Commission, and also confidentially we have provided some additional information to the Commission staff.

Finally, LSS also experiences difficulty in accurately accessing the present extent of transshipment. It is, nevertheless, on the increase with, for example, the Australia Middle East Gulf and West India/Pakistan/Sri Lanka Conference withdrawing direct services and transshipping via Singapore, the withdrawal a few years ago of many direct services ex-Western Australia to North and East Asia to rely instead on transshipment via Singapore, the increasing transshipment from the US via the Far East to Australia, and so on. It is known that many direct operators in the Australia-South East Asia trade allocate at least half their capacity to the carriage of cargo to non-trade areas, such as Europe, North and East Asia and North America. In addition, it has been estimated that approximately 10 percent of the Northbound cargo to Europe goes via transshipment and around 15 percent of the Southbound cargo is transhipped via

South East Asian ports. The service sheets which traced the pattern of shipping services over the last five years, as set out in Attachment C of the main LSS submission, also clearly indicate an increase in the number of Lines offering transshipment services.

Please advise if you require any elaboration in relation to any of the above comments, or whether we can assist in any other way.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L.C. Russell', with a stylized flourish at the end.

L.C. Russell  
**Chief Executive Officer**

## C. THE COMMITTEE'S APPROACH

The need for a national competition policy has been agreed by all Australian Governments.<sup>43</sup> The Governments have further agreed that a national competition policy should give effect to the principles set out in Box 1.2.

### Box 1.2: Agreed Principles for a National Competition Policy

- (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest;
- (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership;
- (c) Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and incidence of the public costs and benefits claimed;
- (d) Any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:
  - (i) to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition; and
  - (ii) in recognition of the increasingly national operation of markets, to reduce complexity and administrative duplication.

These principles comprise an important part of the terms of reference for this Inquiry.

The Committee approached its task at a broad policy level, looking for common themes and issues rather than seeking to develop detailed proposals for each sector of the economy. At the same time, the proposals are designed to have the flexibility to apply sensibly to all the main issues presented to the Committee.

The Committee sought to build on the lessons learned in cooperative economic reform in areas such as mutual recognition, electricity, rail and gas. But the Committee is taking a bolder stance because of the

<sup>43</sup> See Communique of Premiers & Chief Ministers' Meeting, Adelaide, 21-22 November 1991.

The study pointed to the following current and prospective benefits of co-operation in the following areas, and I quote (in part):

“ Service Network/Vessel Deployment

The formation of extensive new vessel networks and redeployment of vessels is the first area where co-operation has made visible progress and produced significant changes since all of the alliance carriers have historically had experience with more limited vessel sharing arrangements, it is not surprising that rapid progress was possible.

Globally integrated vessel networks developed by using the collective assets of the alliance partners offer a number of potential direct benefits, including:

- (1) more cost effective vessel deployment (i.e. improved capacity rationalisation);
- (2) improved flexibility in responding to ongoing changes in worldwide cargo flows;
- (3) improved ability to collectively provide high grade services;
- (4) increased number of direct port calls with fewer transfer points;
- (5) reduced reliance on feeder vessels;
- (6) increased number of fixed day sailings;
- (7) improved transit times;
- (8) increased ability to maintain integrity (punctuality) of each service string or loop;
- (9) Increased risk sharing; and
- (10) Improved co-ordination in new building programmes.

In addition, the combination of higher entry/mobility barriers, improved capacity management and decreased competition between alliance partners creates an environment more favourable to rate and service stability and, possibly, future rate improvement in some of the currently depressed major trade lanes.

Joint Terminal Usage

While there has only been a modest amount of work actually accomplished in this area, all four alliances have identified terminals as an area for significant savings and have set up teams to address terminal issues. The alliances recognise that the cost savings gained by their vessel/cargo co-ordination efforts can quickly be eliminated by inefficient landside operations incapable of swiftly and efficiently moving cargo off vessels and through the port.

The benefits of co-ordinated/consolidated terminals include:

- (1) economics of scale by increasing the density of cargo throughput;
- (2) improved alliance negotiating position relative to port and labour groups for better terminal and stevedore contracts; and
- (3) reduction or elimination of expensive multiple berthing charges.

#### Alliance-wide Container Sharing

Empty container repositioning, one of the most expensive areas in liner operations, is reported to be costing shipping lines an estimated \$3-4 billion annually. Trade lane differences in the type and volume of cargo moving outbound and inbound create a constant imbalance of equipment. So one of the challenges faced by all liner operators is the continued need to get the appropriate equipment positioned at the right time and place.

#### Administration and Finance

Administration and finance is another area being considered for co-operation, but widespread progress has not yet materialised. The idea is to seek cost reductions where administrative functions overlap or pursue risk sharing activities.

#### Information Technology Systems

Carriers are under pressure to provide increasingly accurate and timely information to customers and operational partners. Improved EDI technology has been important to gaining and maintaining a competitive edge. It allows cargo to be pre-cleared and quickly moved through the port. ”

Problems in achieving some of these potential benefits were noted, including the reluctance of some lines to subsume their identity which may be required to achieve, for example, maximum savings on the inland leg, or that long terminal leases for some carriers can detract from the required flexibility to achieve maximum terminal efficiency with new partners.

Another problem was where individual lines saw their competitive advantage being eroded by such widespread co-operation. Michael Porter, in his book ‘The Competitive Advantage of Nations’, stated that “Alliances are a tool for extending or reinforcing competitive advantage but rarely a sustainable means for creating it.” The reverse could apply in the case of mergers or takeovers.

In addition to this point, the question arose whether greater savings could be achieved, and certainly whether such savings could be achieved more rapidly, if companies merged their operations or bought out other shipping companies rather than relying on the alliance mechanism.