



Part X Investigation

Asia-Australia Discussion Agreement

for

Australian Southbound Liner Trades from North East Asia

Issues Paper

November 2003

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SUBMISSIONS

The Commission invites written submissions on the matters identified in this issues paper from all interested parties, including providers and users of outward liner cargo shipping services. Interested parties and members of the public are invited to submit written comments to the Commission (either in hard copy or electronic format) by the close of business, **Friday 12 December 2003 to:**

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Unless a submission is marked confidential, it will be made available to any person or organisation on request. The sections of submissions that are confidential should be clearly identified.

Indicative Timetable for the Investigation

The following timetable provides a guide to the anticipated timing of the investigation:

Releases of Issues Paper and Questionnaire:	November 2003
Submissions deadline in response to the Issues Paper:	12 December 2003
Submissions deadline for questionnaire to shipping lines:	12 December 2003
Release of Position Paper by Commission:	January 2004
Call for further submissions by interested parties:	January 2004
Further submissions deadline:	February 2004
Release of Investigation report to Minister:	April 2004

1. Introduction

Following several complaints from shippers, the Australian Competition and Consumer Commission (the Commission) has initiated an investigation into the conduct of parties to a discussion agreement registered under Part X of the Trade Practices Act 1974 (TPA). The Commission will report to the Australian Government Minister for Transport and Regional Services on whether grounds exist for deregistration of the discussion agreement.

This *Issues Paper* describes the investigative process that will be adopted by the Commission as well as presenting a list of key issues that will be considered in assessing the market conduct of the discussion agreement in the course of the investigation. The Paper is intended to assist interested parties to prepare submissions for consideration by the Commission.

2. Background to the Asia – Australia Discussion Agreement (AADA) matter

In May 2003, the Commission began receiving complaints from importers concerning the announced freight rate increases by the AADA to be implemented on July 1 2003. The Commission also approached the Importers Association of Australia (IAA), which voiced its concerns about the magnitude of this particular announced price increase. There were further complaints by importers about the announced imposition of a peak season surcharge to be implemented in addition to the freight rate rise on August 1 2003. The Commission received information from importers that the freight rate increases that were implemented on July 1 were succeeding in raising average freight rates in the North East Asia – Australia southbound liner trades.

Members of the Asia – Australia Discussion Agreement (AADA), a registered discussion agreement under Part X of the TPA, have announced increases in base freight rates by more than 100 per cent in a period of three months and have also announced the imposition of peak season surcharges.

The AADA was initially registered in April 2000 and has been subsequently varied three times. Currently, it comprises 16 shipping lines (see Attachment A) that operate on the southbound North East Asian (NEA) trade routes, specifically between ports located in the Peoples Republic of China, Taiwan, Hong Kong, Japan, Korea and the Philippines and Australian ports.

The purpose of the investigation is to report to the Australian Government Minister for Transport and Regional Services whether or not there are sufficient grounds in relation to matters referred to in section 10.45(a) (viii) to recommend deregistration of the AADA.

The nature of discussion agreements was the subject of comment by the Productivity Commission in its 1999 report on the shipping industry¹. The Productivity Commission found that discussion agreements should be regulated no differently from other forms of agreements between shipping lines. In its response to the Productivity Commission's recommendations, the Australian Government announced several proposed legislative amendments to Part X, including the way discussion agreements operate. The Government was of the view that discussion agreements have the potential to cover a large proportion of carriers in a particular trade (as they do for the NEA trade lanes) and could consequently affect competition. The legislative amendments included the introduction of subsection 10.45 (1) a) (viii), which provides for the Commission to initiate an investigation.

¹ Productivity Commission (1999), International Liner Shipping Cargo: A Review of Part X of the Trade Practices Act 1974, Final Report.

This *Issues Paper* is intended to highlight for comment and discussion issues that the Commission has identified based on its experience to date and its preliminary public consultations. It is not intended to limit the debate to these issues. Comments on other matters of relevance to the investigation are welcome.

3. ACCC initiated Part X investigation

Pursuant to subsection 10.48 (2A), the Commission can initiate a Part X investigation into the market conduct of parties to a registered agreement into the question whether grounds for the Minister for Transport and Regional Services to be satisfied in relation to matters referred to in subsections 10.45 (1) (a) (viii). These are as follows:

The Minister shall not give a direction under subsection 10.44 (1) (to cancel the registration of the agreement in its entirety or partly) in relation to a registered conference agreement unless:

The Minister is satisfied of the following matters pursuant to subsection 10.45 (1) (a) (viii):

- (a) *that the agreement includes a provision that has the purpose of, or has or is likely to have the effect, of substantially lessening competition (within the meaning of section 45); and*
- (b) *the parties to an agreement have engaged in conduct, or propose to engage in conduct, to give effect to or apply the provision; and*
- (c) *that conduct or proposed conduct has not resulted in, or is unlikely to result in, a benefit to the public that outweighs the detriment to the public constituted by any lessening of competition that:*
has resulted, or is likely to result, from the conduct; or
would result, or be likely to result, if the proposed conduct were engaged in; and
- (d) *there are exceptional circumstances that warrant the giving of a direction under section 10.44 (1).*

Exceptional circumstances are defined in the revised explanatory memorandum given by the Minister when introducing the *International Liner Shipping Cargo Bill (TPA amendment 2000)* into the Parliament.²

These circumstances would cover situations where an agreement:

- (i) *covers a substantial majority of shipping lines and capacity in a trade; and*
- (ii) *where the conduct of those shipping lines has led to, or is likely to lead to, an unreasonable increase in freight rates: and / or*
- (iii) *unreasonable reduction in services;*
- (iv) *with the result that the public benefit from the operation of the agreement is outweighed by the an anti-competitive detriment.*

² The Parliament of Australia (Senate), *Trade Practices Amendment (International Liner Cargo Shipping) Bill 2000* Revised Explanatory Memorandum p 6.

4. Objectives of Part X

Sections 10.17, 10.17A, 10.18 and 10.18A under Part X of the TPA provide statutory exemptions for registered conference agreements and designated shipper bodies, against prosecution for breaches of sections 45 and 47, with the exception of 47(6) and 47(7) (third line forcing) of the TPA.

The primary objectives of Part X of the TPA are outlined in section 10.01 of the Act. These are:

- ◆ to ensure that Australian exporters have continued access to outwards liner cargo shipping services of adequate frequency and reliability at freight rates that are internationally competitive; and
- ◆ 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 flagged shipping is not unreasonably hindered from normal commercial participation in any outwards liner cargo shipping trade; and
- ◆ as far as practicable, to extend to Australian importers in each State and Territory the protection given by this part to Australian exporters.

Furthermore, it is the intention of Parliament that these objectives be achieved:

- ◆ by permitting continued conference operations while enhancing the competitive environment for outwards liner shipping services through the provision of adequate and appropriate safeguards against the abuse of conference power, particularly by:
 - enacting additional restrictive trade practice provisions applying to ocean carriers;
 - requiring conference agreements to meet certain minimum standards;
 - making conference agreements generally publicly available;
 - permitting only partial and conditional exemption from restrictive trade practice prohibitions; and
 - requiring conferences to take part in negotiations with representative shipper bodies;
- ◆ through increased reliance on private commercial and legal processes and a reduced level of government regulation of routine commercial matters; and
- ◆ by the exercise of jurisdiction, consistent with international law:
 - over ocean carriers who have a substantial connection with Australia because they provide international liner cargo shipping services; and
 - to enable remedies for contravention of the provisions of this part to be enforced within Australia.

There are various types of agreements between shipping lines on import trades that can be registered with the Registrar of Liner Shipping under Part X of the TPA. Under sections 10.29 and 10.41 all types of agreements must comply with certain conditions for registration.

Conditions include those relating to lines jointly negotiating minimum service levels³ as well as other negotiable shipping arrangements, such as freight rates, frequency of sailings and ports of

³ Other issues that are in practice discussed between conferences and the designated shipper body include destination terminal handling charges, bunker surcharges, port service charges, and currency adjustment factors.

call, for import trades, that are embodied in eligible Australian contracts, with the Importers Association of Australia (IAA), the designated shipper body, which acts on behalf of all importers.

The consequences for a breach of obligations imposed by Part X include total or partial deregistration of the agreement which renders future conduct by the parties to the agreement liable to all provisions of the TPA. Subject to sections 10.45 and 10.46, the Minister may direct the Registrar:

- (a) to cancel the registration of a registered conference agreement; or*
- (b) to cancel the registration of a registered conference agreement so far as it relates to:*
 - (i) a particular provision of the agreement;*
 - (ii) a particular party to the agreement; or*
 - (iii) particular conduct (paragraph 10.44 (1)).*

5. Role of ACCC under Part X

The Commission has an investigative role under Part X. At the request of the Minister for Transport (section 10.47), or of an organisation affected by the operation of a registered conference agreement (section 10.48) or on its own initiative (section 10.48), the Commission can investigate whether a conference agreement contravenes Part X. Potential areas for investigation include the minimum registration requirements for agreements contained in sections 10.06 to 10.08 as well as failure to negotiate with designated shipper bodies, failure to have due regard for the need for shipping services to be economic and efficient and of reasonable capacity and frequency to meet shippers needs. The Commission reports to the Minister, who then decides on the basis of the Commission's findings what action to take.

6. Recent History of the North East Asia – Australia liner trades.

The recent history of the North East Asia – Australia liner trades has been one of significant entry by lines, leading to excess capacity and contemporaneous falls in demand, leading to low freight rates. Subsequent rationalisation of capacity by the lines and a coincidental significant boom in demand for Chinese goods by Australian consumers has led to upward pressure on freight rates for the southbound liner trade. In addition, there is currently a substantial imbalance in the direction of trade flows, with reported vessel utilisation for liners bound for North East Asia at less than 70 per cent for the first half of 2003, compared to between 80 to 100 per cent for southbound liner services.⁴

In the years 1998 and 1999, entry by new lines into the Australia – North East Asia liner trades⁵ as well as capacity increases implemented by incumbents contributed to excess capacity in the trade in 1999, causing both northbound and southbound freight rates to fall. According to press reports at the time market freight rates for imports from Hong Kong fell to between \$US550 and \$US600.⁶ In response the shipping lines embarked upon a rationalisation program during the following two

⁴ Containerisation International February 2003, Healing Powers p 37 and p 39.

⁵ MSC and Maersk entered in 1998, while China Shipping and Evergreen Marine and its ASA partners Hanjin, Regional Container Lines and Lloyd Triestino entered in 1999.

⁶ Lloyds List Daily Commercial News (1999), Fundamentally the rates are shot but hopes grow that Asia has turned the corner, Friday April 30 pp 6-7.

years in 2000 and 2001, which resulted in a fall in capacity offered to the liner trade.⁷ In addition several shipping lines exited the North East Asia – Australia liner trades although this resulted in very little change to overall capacity.⁸

By contrast, over the period 2002-2003 worldwide demand for imports from North East Asia (in particular China) has increased significantly.⁹ With high vessel utilisation rates for Transpacific and Europe – Asia trade lanes, participant lines appear to have increased freight rates. According to Drewy Shipping Consultants, average freight rates world-wide are forecast to increase to \$US1,224 per TEU, (Twenty foot equivalent unit) an increase of 7 per cent by the end of 2003. By contrast, in 2002, average worldwide freight rates fell by 12 per cent to \$US1,145 per TEU, the lowest level for many years.¹⁰

The current rate restoration program by the member lines of the AADA is occurring against this backdrop of an upswing in volumes carried by liners, and increasing freight rates and revenues on the major east-west trade lanes. As an example, Table 1 shows recent base freight rates for imports from China to Australia and recently announced freight rate rises by the parties to the AADA.

Table 1: Recent base freight rate and other rate increases per 20 foot container from China as announced by AADA

Base Freight rate from China per TEU (twenty foot equivalent unit)	
Dec quarter 2001	\$US 575- 650
June quarter 2002	\$US 575-650
December quarter 2002	\$US 750 – 900
June quarter 2003	\$US 650 – 750
Announced increases in freight rates	
1 July 2002	\$ US 200
10 October 2002	\$US 100
10 October 2002	\$US 100 – Peak season surcharge applicable to 31 January 2003
1 January 2003	\$US 100

⁷ In April 1999, COSCO cut a total of 7 out a combined fleet of 24 vessels for both Australia / NZ – North East Asia. In October 1999, the ANSCON conference dropped four vessels. In April 2000, MSC/Maersk replaced 12 vessels with six larger vessels. In May 2001, China Shipping replaced its fleet of 7 vessels with two larger vessels, and OOCL / ZIM also replaced its fleet of six vessels with three slightly larger vessels.

⁸ In February 2000, Lloyd Triestino and Regional Container Lines quit the trade followed by Cho Yang in October 2000. In April 2002, Yang Ming vacated the Australia – North East Asia liner trade.

⁹ LLDCN (2003) Conference shadows rate strength from Asia, September 19 2003, LLDCN (2002), CP ships warns on boxship shortage November 7 2002, LLDCN (2002), Fury as lines sit on Asia capacity September 5 2002, LLDCN (2002), Question time over liner shipping boom August 15 2002 , LLDCN (2002), Dollar paves way to Chinese box boom August 8 2002.

¹⁰ LLDCN (2003), Drewry paints upbeat picture of containership market. electronic mail October 10 2003

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1 April 2003	\$US 150
1 July 2003	\$US 500
1 August 2003	\$US 200 – Peak season surcharge applicable to ?
1 October 2003	\$US 250

Sources: *Shipping Australia Limited, Lloyds List Daily Commercial News various issues*

7 Key Issues for Investigation

The key issues for the Commission's investigation are the matters referred to in paragraph 10.45 (1) (a) (viii). The principal questions to be addressed include the following:

- What is the relevant proposed or actual conduct of the parties to the Asia-Australia Discussion Agreement?
- What is the nature of the public detriment arising from actual and / or proposed conduct of parties to the AADA, which in turn flows from provisions contained within the Agreement itself?
- What is the nature of the public benefits due to the same said conduct of the parties to the AADA, which in turn results from provisions contained within the Agreement?
- What is the balance of public benefits against the public detriment?
- Do exceptional circumstances exist in this case? (Exceptional circumstances consist of the following: the parties to the AADA comprise a majority of shipping lines and supply a majority of capacity to the southbound liner trade from North East Asia; and the conduct of parties to the AADA has led to an unreasonable increase in freight rates.)
- Does the conduct of the shipping lines warrant deregistration of the AADA?

7.1 Investigation and Assessment procedure

The Commission's approach to this investigation involves a number of steps. Firstly, the Commission has undertaken preliminary discussions with some complainants with a view to ascertaining the nature of issues at the centre of the complaints. Following the distribution of this *Issues Paper* to interested parties, the Commission will receive and assess submissions and comments based on the *Issues Paper*. A questionnaire to key shipping lines will also be circulated in order to obtain relevant supply information. The Commission may hold a further round of public consultation on the basis of information received. Finally, a report for the Minister will be prepared on the basis of the Commission's findings.

The Commission is assessing the market conduct of parties to a registered agreement in the liner cargo shipping industry by comparing the benefits and detriments associated with the operation of the AADA.

While the *TPA* does not define public benefits, the matters which may be considered by the Commission to constitute public benefits are discussed in Millers (2003), Annotated Trade Practices Act 1974 24th edition pp 804-807. According to the Productivity Commission, any public benefits to be gained due to the operation of coordinated agreements in liner shipping are

coincident with those benefits to be gained by shippers (importers and exporters).¹¹ Public detriment from the operation of the agreement is not equated with anti-competitiveness, of itself, however it is defined to be due to that detriment resulting from any lessening of competition. Detriments such as the economic cost that is intrinsic to or associated with a perceived public benefit, is also taken into account in the calculus of the balance of benefit and detriment.¹²

For its assessment of the balance of public benefits and public detriments the Commission will compare two scenarios. The first is the 'factual' scenario comprising the recent past including the operation of the AADA as a registered agreement amongst shipping lines participating on the North East Asia – Australia southbound liner trades. The second scenario is a 'counterfactual' of a hypothetical past with no AADA in place. However, other registered agreements amongst lines in the above trades such as the Australia / New Zealand Eastern Shipping Conference (ANZESC) can be assumed to have still operated in the counterfactual.

Below are a number of issues that are likely to be considered during the Commission's investigation. This is not an exhaustive list but rather it is intended to provide an indication of the type of issues that may be relevant to the investigation. Interested parties are invited to provide comments on these and any other matters considered relevant to the investigation.

7.2 Freight Rates

One area of conduct that is relevant to the Commission's investigation appears to be the coordinated setting of freight rates by the parties to the AADA.

Discounting of freight rates by individual member lines of the AADA

In one form, rate setting agreements may involve the removal of offering of discounts when contracts fall due.

- *Have rates announced by the AADA been undercut by any of the member lines? Is there evidence of pressure on members to adhere to published rates?*
- *Is there evidence of AADA members discounting from rates published by the AADA?*
- *Can shippers procure new contracts with AADA lines at rates discounted below those that have been announced?*

Coordinated increases in freight rates by parties to the AADA

In other cases, relevant conduct may be a coordinated simultaneous increase in freight rates by members of the AADA.

- *Were rates internationally competitive 3 years ago? Are current rates internationally competitive now?*
- *Have rates from NE Asia to Australia risen sharply relative to rates from NE Asia to other destinations?*

Effects of Increased Freight Rates on Importers

- *What effect have the AADA's recent rate increases had on importers?*
- *For importers, how has the current increase in rates affected your business? Can you increase your prices and pass on the rate increase or do you have to absorb the increase? Can you*

¹¹ Productivity Commission (1999) op cit B11.

¹² Millers (2003) op cit pp 807-808

change your sources of supply away from North East Asia at short notice in response to the rise in rates?

- *Has the supply/demand picture changed in the world market for liner shipping services in the late 1990s and what effect would these changes be expected to have on freight rates to Australian importers, which source goods from North East Asia? How have these changes affected demand?*

Imposition of Peak Season Surcharges

- *Shipping lines have adopted the practice of implementing Peak Season Surcharges in addition to the freight rate for the duration of the high import season. What is the purpose of these charges?*
- *Do importers receive any benefits in return for these surcharges and / or do these cover any additional costs due to the peak season?*
- *Are decisions concerning the imposition and removal of peak season surcharges subject to negotiation between the AADA and the Importers Association of Australia?*
- *What factors are behind decisions to withdraw peak season surcharges and when in the peak season are these decisions taken?*

Stability of freight rates

Stability of freight rates is claimed to be a generic public benefit of the operation of a registered agreement such as the AADA.

- *Has the operation of the AADA contributed to stability in freight rate setting for liner cargoes from North East Asia since April 2000? If so is this likely to continue in the future?*
- *Does the AADA have a greater influence on stability of freight rates in a market where there is excessive demand or excessive supply of liner services?*
- *If the AADA did not exist would there be more or less stability in the pattern of freight rates for imports from North East Asia observed in the market? Given that the current market is one of high demand, in which freight rates in a competitive market would be expected to increase do you believe that freight rates would have risen as quickly or by the same magnitude if there were no AADA?*

7.3 Decision Making Regarding Freight Rates

The Commission seeks to understand how freight rates are individually negotiated between importers and the shipping lines. In particular it seeks to understand the extent of the involvement by overseas “Principals” in decisions concerning freight rate setting for imports from North East Asia and how this may affect the market.

- *To what extent are overseas principals currently involved in setting freight rates for Australian importers for imports sourced from China, Taiwan and Hong Kong? Has this changed recently?*
- *If overseas principals do have a significant role in determining freight rates does this-*
 - *enhance or inhibit the competitive environment of inward liner cargo shipping services?*
 - *enhance or inhibit the potential for importers to obtain competitive rates for inward cargo?*
 - *represent a restriction on ocean carriers taking part in negotiations?*

7.4 Service Standards Provided by the AADA.

- *Have service levels changed since the registration of the AADA in April 2000?*
- *Does the AADA contribute to the provision of stable liner services from North East Asia? Please comment.*
- *Would the provision of liner services be as stable or as adequate to the needs of importers if there were no AADA, but ANZESC and the other consortia agreements remained?*
- *To what extent do Australian importers currently have continued access to inward liner cargo shipping services of adequate frequency and reliability?*
- *To what extent has the involvement of overseas management in the decision making on Australia/NE Asian freight movement affected the quality and provision of inward liner cargo shipping services?*

7.5 Investment in new tonnage

The Commission seeks to understand how the parties to the AADA have managed the supply of liner shipping services in a period of increasing demand. What is the general impact upon shippers?

Increases in demand and adequacy of liner services

- *In your opinion is the current increase in demand for imports from China, Taiwan and Hong Kong temporary? Are demand levels for imports expected to remain above those achieved in the recent past?*
- *Is the current level of liner services offered by the parties to the AADA adequate to the current needs of Australian importers for this liner trade?*

Investment in new capacity by shipping lines in response to rising demand

- *If there is increasing demand for imports from North East Asia relative to liner supply resulting in upward pressure on freight rates, in your opinion have the members of the AADA increased or tried to increase capacity to cope with the higher levels of demand?*
- *Is there evidence of new investment in shipping capacity by competitors to the AADA?*
- *If the AADA members have not alleviated demand pressure by chartering in new tonnage into the trade, how attributable is this to the AADA? What is the role of the parties to the other registered agreements such as the Australian New Zealand Eastern Shipping Conference (ANZESC) in determining new investment in tonnage for the trade?*

Costs of increasing capacity and availability of suitable shipping

- *What economic factors would contribute to the introduction of greater capacity on this liner trade in response to the increasing demand? In general what is the response time to introduce a new vessel into the liner trade?*
- *Have the costs of chartering new tonnage into the liner trade increased appreciably since January 2003? Has this contributed significantly to the perceived lag between rising demand and a supply response?*
- *What is the current general availability of suitable vessels for chartering into the North East Asia – Australia liner trades?*
- *To what extent is the decreased vessel utilisation of northbound liner trades which would result from the chartering of more vessels a factor in delaying the supply response?*
- *What other factors hinder the supply response of the parties to the AADA to increased demand?*

- *If there was no AADA would there be a greater supply response to the current condition of excess demand by the parties to the various agreements such as ANZESC?*

7.6 Negotiation Processes

Part X provides for negotiations between the shipping line parties to the registered agreements, such as the AADA and the designated peak (such as the Importers Association of Australia) and secondary bodies (such as the Australian Federation of International Forwarders), which act on behalf of importers.

- *What is the nature of the negotiation process involving AADA member lines and shippers?*
- *Are the operations of the shipping lines structured in a way that is conducive to negotiations?*
- *Have some importers preferred to negotiate individually rather than adopt a collective negotiation stance as envisaged in Part X? What effects has this had on outcomes?*
- *To what extent does the involvement of overseas management to decision making concerning NE Asian – Australian freight rate setting affected the negotiation process?*

7.7 Access to Import Markets

One of the objectives of Part X is to ensure that importers in all States and Territories have stable access to import markets.

- *Have the actions of shipping lines allowed importers to have stable access to import markets in North East Asia?*
- *Are there specific cases to demonstrate that the AADA has affected the scale of shipment of inward cargo from NE Asia since 2000?*

7.8 Competition and Trade Agreements on the NE Asian Trade Route

Under Part X, liner operators have registered a wide variety of agreements ranging from full conferences to non-binding discussion agreements, as well as technical agreements covering slot swapping and rationalisation of sailings.

Discussion agreements involve both conference members and independent operators on a particular trade route discussing matters of mutual interest, typically including freight rates. Consequently, discussion agreements have the potential to limit choices for shippers on a particular route and generally raise the potential for anti-competitive behaviour.

- *Is there competition for inward cargo (a) between conferences and independents within AADA? and (b) between the AADA (including independents) and non-AADA members?*
- *Is there any evidence of price competition to the AADA offered by non-AADA slot charter services such as Gold Star Line and APL which use AADA vessels?*
- *Are there any examples that demonstrate that the conduct of shipping lines has changed materially since the formation of the AADA?*
- *To what extent have discussion agreements hindered or enhanced competition for inward liner cargo shipping services on the NE Asian- Australian liner trade route?*
- *Do the AADA members offer a significantly superior service to alternatives, such as the break bulk service offered by Project Asia Service or transshipment services through Singapore? To what extent do you consider these alternatives to be viable substitutes?*

7.9 Ease of entry by shipping companies into the North East Asia-Australia Liner Trade

The Commission seeks views on the likelihood of new entry into the North East Asia-Australia liner trade and the effect that this may have on freight rate rises.

- *Are there any significant regulatory or other cost barriers to new entrants contributing new services and tonnage to the southbound liner trade?*
- *If not why has there been no entry on a significant scale in response to the current demand increase? Given that there are sixteen major shipping lines operating in the AADA, are there suitable new entrants that could enter the trade in the near future? Could it be expected that lines that have recently vacated this trade could rejoin in the near future?*
- *Do the parties of the AADA and other interested parties expect a significant entrant into the North East Asia-Australia liner trade in the near future? Does this affect any plans to further increase freight rates?*
- *Do you believe that the parties to the AADA have significant incumbency advantages over new entrants in the form of market presence, customer loyalty, market knowledge, lower costs and better service?*
- *Recent experience suggests that new entrants to the trade have joined the AADA soon after entry. What are the reasons for this?*

7.10 Regulatory Jurisdictional Issues

The parties to the Asia-Australia Discussion Agreement are not only subject to Australian competition law through Part X of the *TPA*, but may also be subject to the jurisdiction of competition laws of other nations, namely in this case the Peoples Republic of China (PRC), Hong Kong and Taiwan. The Commission seeks to understand if the compliance of the parties to the AADA to the competition laws of these three countries affects the ability of the parties to the AADA to comply with Part X of the *TPA*.

- *Can you give a brief description of the main elements of Government regulation governing competition in export liner trades for the countries of PRC, Hong Kong and Taiwan?*
- *By complying with the provisions of the competition law regimes of these three countries, does the parties to the AADA experience any difficulty in complying with the new provisions of Part X in relation to inbound liner trades? Please explain.*
- *By complying with the provisions of the new provisions of Part X relating to inbound liner trades, does this create problems for the AADA in complying with the provisions of the competition laws of any of the above three countries? Please explain.*
- *By complying with the provisions of the competition laws of the above three countries does this create problems for the parties to the AADA in cooperating fully in this Part X investigation? If so please explain.*

Attachment A – Parties to the Asia – Australia Discussion Agreement

ANL Container Line Pty Limited (ANLCL)
China Shipping Container Lines Co Ltd (CSCL)
COSCO
FESCO
Evergreen Marine Corporation
Hamburg Sudamerikanische Dampschiffahrts – Gesellschaft KG (Columbus Line)
Hanjin Shipping Co Ltd
Hyundai Merchant Marine, Seoul (HMM)
Kawasaki Kisen Kaisha Ltd (K Line)
Maersk Sealand
Mitsui OSK Lines Ltd (MOL)
Mediterranean Shipping Company S.A. (MSC)
NYK Line
Orient Overseas Container Line Ltd (OOCL)
P&O Swire Containers Ltd
Zim Israel Navigation Co Ltd

Source: Asia-Australia Discussion Agreement variation iii.