

# AUSTRALIAN PEAK SHIPPERS ASSOCIATION

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Ms Margaret Arblaster  
General Manager, Transport and Prices Oversight Branch  
Regulatory Affairs Division  
Australian Competition & Consumer Commission  
GPO Box 520J  
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MA 27/6

23/6/00

Dear Ms Arblaster

## **ACCC Part X investigation into the Australia/South East Asia Trade Facilitation Agreement (TFA)**

### **Background**

APSA is the Designated Peak Shipper Body specified under sub-section 10.03(i) of the Trade Practices Act and represents the interests of Australian exporters in relation to outwards liner cargo shipping services.

### **The APSA Complaint**

After numerous complaints from exporters that the rapid increase in freight rates from A\$450/TEU to A\$600/TEU and then to A\$800/TEU did not allow exporters time to review their export prices to cover the new rates, APSA lodged a complaint with the Federal Minister of Transport.

In APSA's view the reason that the TFA was able to impose these increases to rates over a 4 month period was because the formation and operation of the TFA has eliminated competition in the South East Asia trade.

APSA believes the TFA has breached Section 10.01(2) of the Act and the TFA should be deregistered.

Prior to the TFA being registered as a Conference in 1996 there were three shipping conferences operating in the South East Asia trade:-

(1) **AAX Conference** consisting of:-

- ANL
- APL Lines (AUSTRALIA)



- 'K' Line
- NYK
- P & O Nedlloyd
- Pt. Djakarta Lloyd

(2) **AAA Conference** consisting of:-

- Malaysian International Shipping Corporation
- Pacific International Lines
- Mitsui OSK lines
- Orient Overseas Container Lines

(3) **ASA Consortium** consisting of:-

- Evergreen Marine Corporation
- Hanjin Shipping
- Lloyd Triestino
- RCL (AUSTRALIA)

These three conferences operated efficiently and in competition with each other. In addition there were three lines operating independently in the trade. These lines were:-

- Compagnie Generale Maritime
- Maersk Australia
- Zim Israel Navigation

When the TFA was formed in 1996 all 17 lines above operated as one conference eliminating any competition in the trade!

The TFA announced publicly after there had been an agreement to raise the rates that the new rates, or the agreement to raise the rates, were/was non-binding on the 17 lines.

However exporters have complained to APSA that the rates had never been more binding in this trade and that all shipping lines were quoting A\$800/TEU as the lowest rate.

The very fact that the 17 lines actually meet together at frequent intervals to discuss rates gives rise to the claim that the TFA is anti-competitive apart from its ability to impose rate increases.

APSA believes the TFA should be deregistered as it is anti-competitive and there should be a return to the situation pre-TFA.

### **The Issues.**

#### **7.1 Freight Rates**

Q. Were rates internationally competitive 3 years ago?

- A. In general, yes.
- Q. Are current rates internationally competitive?
- A. In general, yes.  
However there are some commodities which would disagree.
- Q. Have rates from Australia to S.E. Asia risen sharply relative to rates to S.E. Asia from other countries?
- A. In APSA's view yes.
- Q. Has the recent rate restoration given effect at a rate that has caused hardship to some exporters?
- A. The speed at which rates have been restored has caused hardship to many exporters.
- Q. Given changes in the liner shipping services industry, to what extent does the rate movement reflect optimising behaviour by shipping lines?
- A. The anti-competitive behaviour of the TFA has allowed rates to rise at an unacceptable frequent interval.
- Q. Have rates announced by the TFA been non-binding on Member lines or is there evidence of pressure on members to adhere to published rates?
- A. Although APSA has no evidence APSA has received information that leads it to believe that pressure has been applied to lines to adhere to published rates, see comment earlier.
- Q. Has the supply/demand picture changed in the world market for liner shipping services in the late 1990's and what effect would these changes be expected to have on freight rates to Australian exporters?

How have these changes affected demand, in particular demand by exporters of low value goods?

- A. There has been a dramatic change to the supply demand picture in the last five years and it will continue.

The changes have been brought about by mergers, takeovers, and alliances.

Recent examples of the changes are the merger of P & O and Nedlloyd, the takeover of American President Lines by Neptune Orient Line and the takeover of Sealand by MAERSK, amongst other mergers or takeovers.

The situation is now that the top 10 global liner companies control more than one third of the worlds shipping capacity and this is leading to a reduction in competition in shipping services and freight rates.

At a recent shipping seminar in Melbourne a speaker made a statement that by the year 2010 there would be three shipping groups governing world trade!

Freight rates have historically been set on what the trade can bear. That philosophy has virtually disappeared and there is a move to set rates on an FAK (freight all kinds) basis regardless of the contents of the container.

It is the low value commodities which will be the losers.

Q. Shipping lines have adopted the practice of unbundling freight charges. How has this affected exporters?

Has it encouraged or inhibited comparison of freight charges?

What effect has this had on negotiations about the various components of the freight charges?

A. Unbundling freight charges has been a practise for some time although there has been an acceleration of the practice leading to a push by lines to introduce surcharges supposedly to provide more transparency to exporters.

The problem that exporters and APSA has is that firstly exporters are unable to apply surcharges to commodity price contracts because unlike a price or a freight rate surcharges are not fixed for any particular period.

This generally means that the exporter has to find any increases in surcharges out of his own pocket!

Secondly exporters and APSA are unable to gain access to agreements between lines and their contractors so that the information contained in a surcharge cannot be verified.

APSA has a perception that surcharges are de-facto freight rate increases. Exporters have always called for all inclusive freight rates without surcharges!

## 7.2 **Decision making regarding freight rates**

APSA is unable to ascertain the extent to which overseas principals make the final decision on freight rates.

## 7.3 **Access to containers**

Containers are viewed as part of the vessels equipment and sufficient containers should be supplied and made available by the operator of the vessel to fill the vessel.

However there has been a number of instances recently where lines have made demands on exporters for the re-positioning of empty containers.

This charge is known as the Equipment Repositioning Surcharge.

APSA deplores this practise and any cost for repositioning containers should be part of the operators voyage costs and an item for negotiation at the time of rate negotiations.

7.4 **Service Standards**

There has been no change to service levels to S.E. Asia since the formation of the TFA, The same vessels make up the TFA service as they did under the previous multi-conference arrangements.

7.5 **Negotiating Process**

The negotiating process for freight rates is a matter better discussed with exporters who organise their own freight rate negotiations.

7.6 **Access to Export Markets**

In APSA's view exporters in all States and Territories generally have stable access to export markets.

However as discussed under item 7.3 there have been instances where exporters have received demands for re-positioning costs of empty containers because adequate numbers have not been available.

7.7 **Competition and Trade Agreements**

APSA has no evidence that there is competition between the lines that make up the TFA.

Q. To what extent have discussion agreements hindered or enhanced competition for outwards liner cargo shipping services on the Australian S.E. Asia trade?

A. Discussion agreements worldwide are deplored by shippers generally because of the fact that they lead to the elimination of competition.

APSA is an associate member of the Federation of Asean Shippers Councils and all its members are of the view that discussion agreements eliminate or significantly reduce competition and should be prohibited.

If price collision within carriers groups, including discussion agreements was prohibited shippers views would be markedly different.

Exporters believe that shipping conferences and discussion agreements should limit their intra-action to cooperative efficiency and cost-saving agreements, such as vessel-sharing agreements and service matters.

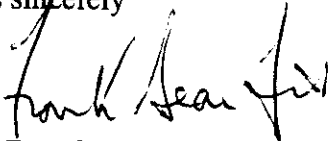
**Conclusion**

International companies from other industries operate without anti-trust immunity and shipping lines should understand and accept that they enjoy a very privileged position!

The main object of Part X is to permit continued conference operations while enhancing the competitive environment for outwards liner cargo shipping services.

It is part of APSA's view that the TFA has breached Part X by eliminating competition in the South East Asian trade and therefore the TFA should be deregistered.

Yours sincerely

A handwritten signature in black ink, appearing to read "Frank Beaufort". The signature is written in a cursive, somewhat stylized script.

Frank Beaufort  
Executive President.