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MARS/PRISM:



**Australian
Competition &
Consumer
Commission**

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16 February 2006

Mr Frank Beaufort
Executive President
Australian Peak Shippers Association
Level 1, 68-72 York Street
SOUTH MELBOURNE VIC 3205

By fax: (03) 9690 9087

Dear Mr Beaufort

I refer to the current investigation by the Australian Competition and Consumer Commission (ACCC) into an alleged contravention of section 10.41 of the *Trade Practices Act 1974* (the Act) by the members of the Australia to Europe Liner Association (AELA).

After reviewing information provided by the Australian Peak Shippers Association (APSA) and AELA dating from your initial complaint and subsequently, and seeking comments and further information from AELA, the ACCC has decided to broaden the scope of the investigation to address whether the members of AELA contravened s. 10.41(2) of the Act in addition to s.10.41(1)(b) (the subject of the draft report). Sub-section 10.41(2) prescribes a minimum period of notice to designated shipper bodies of changes in negotiable shipping arrangements.

The ACCC has also decided that its report of the investigation should address any implications that AELA's decision to terminate the AELA Constitution agreement may have for any decision the Minister may make, in response to the ACCC's report and other relevant considerations, in respect of the Minister's powers under s 10.44(1) of the Act.

Investigations into APSA's complaint have been substantially finalised and the ACCC is working to complete its report as soon as possible.

The ACCC has six further questions, the answers to which would assist in completing the ACCC's assessment of this matter.

First, APSA was advised by AELA by fax on 13 July 2005 that the new outwards Origin Terminal Handling Charges (OTHCs) were to take effect on 28 July 2005. Did APSA at any stage query with any representative of AELA the period of notice that had been given by AELA to APSA for the increase in OTHCs?



Second, if not, did APSA intend to signify to AELA that APSA accepted the lesser period of notice than that provided for by s 10.41(2)?

Third, the ACCC understands, from documents provided with your letter of 7 November 2005, that AELA's notices to shippers of the increase in OTHCs effective from 28 July 2005 were published in the trade paper(s) on 21 July 2005. Were AELA's notices published on or about 21 July 2005, and, if so, in which publication(s)?

Fourth, did any discussion occur between APSA and any representative of AELA (initiated by either party) between 13 July 2005 and 22 July 2005 inclusive (when AELA faxed a response to your fax of 14 July 2005) in relation to:

- (i) OTHCs; or
- (ii) APSA's request in your fax dated 14 July 2005 to sight the 'current and the previous contract for comparison purposes'?

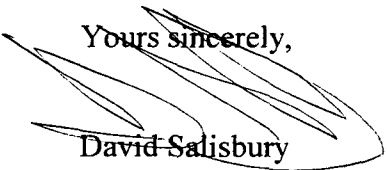
Fifth, in your letter dated 3 February 2006 to the ACCC you stated, in response to my question as to whether and how confidentiality agreements between shipper representatives and conference lines might accommodate direct negotiations by shipper representatives with stevedores of the kind you have signalled to AELA and the ACCC, 'APSA would gain access to these agreements through the Shipping Lines'. Do you consider that there would be any actual or potential conflict of interest in a designated shipper body's receiving copies of stevedoring agreements for the purposes of negotiations under s 10.41 if the shipper body were also seeking to negotiate directly with stevedores on behalf of shippers? If so, how might that be overcome?

Sixth, if a shipper body seeks to negotiate direct access to terminals on behalf of shippers, do you consider it to be acting in competition or potential competition with shipping lines in doing so?

Your response to these questions before 5pm on Wednesday 22 February 2006 would be appreciated.

If you have any questions in relation to the ACCC's investigation of APSA's complaint, please do not hesitate to contact either myself on (03) 9290 1919 or Adrian Trantino on (03) 9290 1987.

Yours sincerely,


David Salisbury
Director – Rail and Waterfront
Transport and Prices Oversight