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Salisbury, David

From: Deborah King [DKing@ShippingAustralia.com.au]
Sent: Tuesday, 14 February 2006 9:27 AM
To: Salisbury, David
Subject: Questions Relating to the alleged breach of Section 10.41 of the Trade Practices Act (1974) by the Australia to Europe Liner Association (AELA)
Attachments: image002.gif; image001.wmz; 20060208DavidSalisburyACCCAnswers.DOC

David

Please accept my apologies I am resending yesterday's email regarding the above.

Kind regards

Deborah King

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Dear Mr Salisbury

31 January, 2006 Questions Relating to the alleged breach of Section 10.41 of the Trade Practices Act (1974) by the Australia to Europe Liner Association (AELA)

I acknowledge receipt of your letter dated 31 January (your reference M2005/307) asking AELA to respond to a number of questions raised by the Commission. Attached are AELA's responses to the questions raised in Annex 1 and 2 attached to the letter.

CONFIDENTIALITY
GRANTED

Yours sincerely

Llew Russell
Chief Executive Officer
Shipping Australia Limited

ANNEX 1

1. AELA's negotiations with APSA commenced on 13 July 2005 when AELA sent a notice to APSA proposing increases to the OTHCs.
2. AELA's negotiations with APSA ceased following a meeting between APSA and AELA on 15 September 2005 that was also attended by the Minister's representative pursuant to Part X of the *Trade Practice Act*.
3. AELA first gave APSA notice of the proposed change in OTHCs on 13 July 2005.
4. At the time that AELA notified APSA of the change of OTHCs, APSA had not agreed to a reduced period of notice. However, AELA's letter to APSA of 12 July asked APSA to confirm that it accepted the increase as proposed.

APSA subsequently commenced negotiations with AELA in relation to the quantum of the increase but did not object to AELA's proposed introduction date of 28 July 2005. AELA understood this to signify acceptance by APSA of the lesser period of notice. Had AELA received any objection from APSA in relation to the introduction date, AELA would have delayed implementation of the proposed increase in OTHCs.

5. APSA first notified AELA that it wished to negotiate on the change in OTHCs in its fax to AELA dated 14 July 2005.
6. The members of AELA did consider APSA's request to sight the then current and previous stevedoring contracts before the increases in OTHCs notified to APSA came into effect.

APSA's request of 14 July was forwarded to all AELA members immediately upon receipt. Members views were canvassed in a series of correspondences and discussions before responding to APSA with AELA's fax of 22 July 2005.
7. The fax dated 22 July 2005 referred to above was approved by the AELA Members before it was sent.
8. APSA's request was the subject of ongoing consideration and discussion by all members of the AELA, mindful of their Part X obligations, throughout the period of negotiations with APSA.
9. Consortium Hispania Lines (**CHL**) provides services between Australia and Europe pursuant to a slot charter agreement with P&O Nedlloyd that includes terminal services. CHL therefore does not acquire terminal services from any stevedoring company in Australia its own right.

CHL was consulted as part of the consultations and discussions described above and approved the decision not to provide APSA with a copy of the 2005 Terminal Services Agreement.

14. Member lines of the AELA believe it would be appropriate to request confidentiality undertakings from a designated shipper body wherever it was proposed to disclose confidential information to that body for the purposes of section 10.41. We note that no undertaking of confidentiality of any type was offered by APSA at any stage when it requested that the AELA provide it with full copies of terminal services agreements.
15. If APSA were to pursue direct negotiations with stevedores in the way suggested, this would be likely to constitute APSA and its members as competitors or likely competitors to AELA's members for the acquisition of terminal and related services for the purposes of the *Trade Practices Act (TPA)*.

Division 5 of Part X of the TPA provides a range of exemptions from sections 45 and 47 of the TPA to AELA members in relation to their negotiations with stevedores and each other. These exemptions would not apply to APSA or its members. As a result, any arrangement or understanding between AELA or its members and APSA or its members in relation to the price or terms of the acquisition of terminal services or related services would create a significant risk of breaching the TPA unless authorisation was granted under Part VII of the Act. In these circumstances, AELA's concerns in relation to making broad disclosures of all of the terms on which it acquires these services would be further heightened.

AELA has not yet considered whether or, if so, how, such concerns might be able to be overcome.

Annex 2

1. The 'Agreement' referred is the Australia/New Zealand to Europe Liner Association Constitution. It is a registered Agreement under Part X. The date of the last agreed variation to the Constitution was 28 November, 2005.
2. The then current members of the AELA all gave notice on 14 December 2005 to the Chairman of the AELA of their intention to withdraw from the Association.
3. The 'ANZ Alliance' was a term used by P&O Ports for the purposes of the terminal services agreement to refer to the members of the AELA that were party to that agreement.

There is no 'ANZ Alliance Agreement' separate to the AELA Constitution referred to in the response to question 1 of Annexure 2 above.

4. As noted above, there is no separate 'ANZ Alliance Agreement'
5. Please refer to the response to question 3 of Annexure 2 above.
6. Please refer to the response to question 9 of Annexure 1 above.
7.
 - a) Please refer to the response to question 3 of Annexure 2 above.
 - b) The AELA members parties to the 2005 Terminal Services Agreement have agreed with P&O Ports that the contract in the form provided confidentially to the ACCC will terminate with effect from January, 2006.
8. As noted above there is no 'ANZ Alliance Agreement' and the 2005 Terminal Services Agreement will terminate.