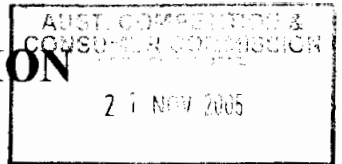


AUSTRALIA TO EUROPE LINER ASSOCIATION

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MARS/PRISM

Mr David Salisbury
Director – Rail and Waterfront
Transport and Prices Oversight
Australian Competition and Consumer Commission
GPO Box 520J
MELBOURNE VIC 3001

18 November, 2005

Dear Mr Salisbury,

The members of the Australia to Europe Liner Association (AELA) have instructed me to reply to your letter dated 4 November, 2005 and to provide the information requested by the Commission in that letter. It should be noted that P&O Nedlloyd has now withdrawn from membership of AELA (notice period expired 12 November) and that CMA CGM gave notice of withdrawal but that is currently being reconsidered.

The Commission is investigating the complaint by the Australian Peak Shippers Association (APSA) that in its view the AELA has contravened Section 10.41 of the Trade Practices Act, 1974 (Cth) regarding negotiations relating to an increase in outward (Origin) Terminal Handling Charges (OTHCs) which took effect on 28 July, 2005.

Our understanding is that particular reference is being made to Section 10.41 (1)(b) in Part X which states “if the shipper body requests the Parties (to a registered conference agreement) to make available for the purposes of the negotiations any information reasonably necessary for those purposes and itself makes available for those purposes any such information requested by the Parties – make the information available to the shipper body”.

In your letter of 4 November, you set out the ACCC’s understanding of the facts surrounding APSA’s complaint. The members of AELA consider this account of the facts to be correct but not entirely complete. Reference is made in the third bullet point to a letter from P&O Ports confirming that a 2.6% increase had been agreed across all tariff items effective 1 April, 2005. It should be added that in that letter, P&O Ports stated that the contract terms and conditions were confidential with the clear implication they could not be disclosed to a third party such as APSA. Furthermore, during the negotiations relating to the general rate increase held on 15 September, 2005 reference was also made to the application of the increase in

OTHCs. Relevant extracts from the notes of those negotiations are attached to this letter (Attachment B).

The Commission also asks why AELA did not allow APSA to view its contracts with P&O Ports during the negotiations? Members of AELA are of the view that the contract contains commercially sensitive information and were concerned by providing such information to APSA they could have breached the confidentiality clause in the contract with P&O Ports. This view was clearly confirmed in Mr Barrett's letter of 21 July, 2005 referred to above. It would be damaging to the commercial interests of the parties to the contract should any third party have access to details of that contract.

The Commission also asked whether AELA considers that the information contained in the contracts would have been reasonably necessary for the purposes of the negotiations with APSA? Members do not believe that such information was reasonably necessary for the purposes of these negotiations because it was only a small increase, being the first increase since 2000 and they had provided reasons to APSA why P&O Ports believed the terms and conditions of the contract were confidential to the specific parties to that contract and also confirmed that there had been a 2.6% increase. The new tariff rates were nevertheless provided to APSA but not the contract itself. As you will see in the notes of the negotiations of 15 September, the AELA representatives specifically asked the Minister's representative, Mr Neil Kelso, who is also the Registrar of Liner Shipping, whether such commercially sensitive information was reasonably necessary for these negotiations and he replied that Part X was not a strong mechanism to force Members to disgorge information. Given the circumstances of this particular negotiation and the size of the proposed increase, members came to the unanimous view that the information that had been provided was considered to be reasonably necessary and therefore sufficient.

The Commission also asks whether AELA would have any objections to allowing APSA to sight only the sections of the contracts with P&O Ports which contain information such as the tariffs themselves and any discounts and rebates? AELA has provided APSA with the tariff in the 2005 contract and there was no other information in that contract which AELA members considered relevant to this particular negotiation.

In response to the other questions raised by the ACCC, AELA did not request APSA to provide it with any information during the negotiations and APSA, or any other shipper body, has not requested to sight contracts between AELA and P&O Ports on any other occasions.

As requested, in Attachment A are the relevant contracts between AELA and P&O Ports dated 1 January, 2003 and 1 January, 2005. The rates in the latest contract came into effect on 1 April, 2005. The members of AELA request that these contracts be kept strictly confidential between the ACCC and AELA with the exception of the tariff rates that have already been provided to APSA. It is the view of those members that the terms and conditions of these contracts are commercially sensitive and should not be revealed to any third party. To do so would seriously damage their commercial interests. It would be appreciated if the ACCC could advise immediately if there is any problem with keeping these contracts strictly confidential.

Also in Attachment B, as requested, are copies of all the correspondence exchanged between AELA and APSA relevant to the increase in OTHCs which occurred this year as well as mentioned above, extracts from the negotiations held with APSA on 15 September, 2005.

Please advise if you require us to provide additional information in relation to this investigation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M K Orchard'. The signature is written in a cursive style with a large initial 'M' and 'K'.

M K Orchard
AELA Manager

ATTACHMENT A

Confidentiality granted

ATTACHMENT B

Confidentiality granted
