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Ms. Margaret Arblaster
General Manager
Transport and Prices Oversight Branch
Regulatory Affairs Division
Australian Competition and Consumer Commission
GPO Box 520J
MELBOURNE VIC 3001

Dear Ms Arblaster,

Supplementary Submission to the ACCC re the Investigation into the Australia/South East Asia Trade Facilitation Agreement

Liner Shipping Services Ltd has perused a number of the submissions covering the above investigation on the ACCC website and would like to comment on some of the points raised therein.

Australian Horticultural Exporters' Association (AHEA)

The comment is made by the AHEA that competition was attracted to the profitability of the South East Asia run as a result of the "premium" rates obtained at the time (i.e. mid 1990s). This was not the case as it can be clearly shown that the rates in 1995 and 1996 were certainly not at premium levels. It is appreciated that horticultural exporters are obviously not aware of the high costs of running a refrigerated container service in this trade with the need, for example, to reposition expensive refrigerated containers empty southbound and the high cost of meeting the service levels appropriately demanded by horticultural exporters and supplied by the Lines.

The AHEA also does not appear to appreciate the impact of global over-tonnaging which occurred in the second half of the 1990s which, when combined with the economic crisis experienced by a number of Asian countries, resulted in serious over-tonnaging worldwide, and this was the motivating factor for Lines entering trades such as the Australia/South East Asia trade, i.e. to utilise that tonnage irrespective, to some extent, of the freight rate levels prevailing. Furthermore, a number of international carriers entered the trade to ensure that they could meet the demands of global tenders, which included countries like Australia and New Zealand. TFG Member Lines, therefore, cannot agree with the point that competition was attracted to the trade as a result of "premium" rates.

TFG Member Lines agree with the AHEA comment that maintenance of the very low rate levels reached in this trade could well have seen shipping Lines having to withdraw services which, regrettably, could have been at relatively short notice.

Reference is made to lack of official notification to the AHEA of proposed freight rate increases, but there are no details supplied to support that claim. There was one instance where it was difficult to convey the necessary advice because of the lack of availability of the responsible person in AHEA. All other decisions of interest to AHEA were fully advised to them during 1999 and 2000. Mention is made that an Emergency Bunker Surcharge was introduced but, given the very significant increase in bunker fuel prices, if there was not recovery of such costs then services would not have been able to have been maintained. In addition, being a surcharge means that it can easily be withdrawn when, hopefully, bunker fuel prices decline.

Terminal Handling Charges are well covered in the original TFG submission, but it is worth emphasising the point that the itemisation of such charges does not affect the competitiveness of the through-rate, which is obviously of prime concern to horticultural exporters.

It is difficult to understand the point made by the AHEA that "Shipping Lines are misusing their collective power and seek to impose quarterly increases…" when an existing rate was extended for a four-month period to 1 August 2000 but, given conditions in the trade, it has been decided to maintain the negotiated rate until the end of 2000.

The AHEA complain that they do not have, in effect, meaningful negotiations with the TFG, but the only conclusion that can be drawn is that, in their view, the only meaningful negotiation would be maintenance of the existing low level of rates. Despite comments to the contrary, there are shipping opportunities for AHEA members outside of the TFG. Furthermore, the individual members of the AHEA are no more bound to accept the rates offered by the TFG than the TFG members are bound to apply them. The current practice is for individual shippers to seek separate negotiations with individual Lines for service agreements, with the TFG-AHEA rates being the starting point, from which further discounts are applied. The result of this practice is that the rates actually applied in 2000 for the carriage of horticultural cargoes are, in most cases, not significantly more than those prevailing in 1999, and on some sectors are actually substantially less.

The AHEA believes that the TFG should be deregistered and it would appear that they yearn for the day when there were fewer shipping Lines in the trade and less excess capacity, which provided a much more equitable balance between the provision of the services required by these exporters and the prices required to support those services.

Western Australia Shippers' Council Incorporated (WASC)

WASC maintain that there are instances of contracts lost and threats to continued business viability. TFG Member Lines would be very interested in receiving details of the contracts lost as a result of the proposed freight rate increases as, to-date, they have received no such information. Threats to continued business viability could arise where a business has expanded, or been established, on the basis of unrealistic freight rate levels which did prevail in the late 1990s, especially in 1998/99.

WASC complain of the lack of space from WA but fail to mention that there are shipping Lines providing dedicated services from WA to Singapore, such as MAERSK, “K” Line and APL Ltd. The TFG is aware that on a few occasions there have been some shortshipments ex WA but such cargo has been accommodated on other vessels which have minimised any delay in delivery.

By far the potential to resolve this particular problem rests with a grouping such as the TFG rather than individual carriers or consortia having to deal with such service difficulties on their own. In effect, the larger grouping of Lines provides a greater opportunity for resolving these service problems, and TFG Member Lines look forward to having more detailed consultations with WASC with a view to removing any service deficiencies.

It should be noted that Fremantle has received, for a long time, the best service to South-East Asia of any Australian port, with almost daily departures.

Australian Peak Shippers Association (APSA)

APSA complains 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. Exporters were given notice of the proposed increase to A$600 on 1 January 2000 and were subsequently made aware that there was to be an increase on 1 April 2000. This increase did not eventuate because of competition in the market, and this point has been emphasised in the main TFG submission.

APSA's comparison between a rate of A$450/TEU and A$800/TEU to demonstrate the quantum of the increase in market rates could be misleading. At no time has there been a TFG tariff, or agreed rate of A$450/TEU. In fact, most rates, even during 1999, were significantly higher than that. The A$450 rate, which is frequently used by APSA, was at the lowest end of the market for a very few commodities/shippers. The A$800 rate was, in effect, the highest rate that the TFG Lines could achieve, with most rates actually charged being less than that. The quantum of the increase in rates across the whole market, therefore, is significantly less than that indicated by APSA.

TFG Member Lines reject the APSA claim that the TFG has eliminated competition in the South East Asian trade. Besides the transhipment services to South East Asia, the direct competitors are the Mediterranean Shipping Company, Contship Containerlines, Wallenius Wilhelmsen Lines, Hapag-Lloyd, Marfret, Swire Shipping Services and, more recently, Evergreen Marine Corporation has resigned from the TFG and Lloyd Triestino has given notice of their resignation.

TFG Member Lines completely reject the APSA allegation that the TFG has breached Section 10.01(2) of the Trade Practices Act, which, in any event, is not concerned with grounds for deregistration of the Agreement.

APSA believes the TFG should be deregistered on the basis that, in their view, it is anti-competitive and the trade should be returned to the situation pre-TFG. In fact, rates in the marketplace remain highly competitive, but APSA do not appear to recognise that a continuation of the very low rates in the trade because of the additional capacity introduced would have led to serious instability and the withdrawal of some Lines, as well as a significant reduction in service levels. The Trade Facilitation Agreement gives Lines the ability to discuss and agree rates on a non-binding consensus and this is reflected in rates that are actually being applied in the marketplace. It is surprising that APSA appears to believe that if all sixteen existing Members of the TFG formed a Conference, which would provide for the compulsory application of common rates, that this would be a preferable alternative to the current situation which provides a more realistic approach to the current market situation.

The high costs of transhipping containers to a range of destinations not served by direct calls, and absorbed by TFG Member Lines, is another important point simply not acknowledged by ASPA.

APSA states that rates were internationally competitive three years ago and that in general the current rates are internationally competitive, although APSA recognises that some commodities would disagree.

APSA maintain that they are unable to obtain access to agreements between Lines and their contractors so that surcharges cannot be verified. APSA is requested to provide evidence where there has been a refusal to show, confidentially, information to APSA to support these surcharges.

APSA also claim that there have been a number of instances recently where Lines have made demands on exporters for the repositioning of empty containers. It is claimed that this charge is known as the Equipment Repositioning Surcharge. TFG Member Lines have no knowledge of this surcharge and would ask APSA to provide evidence of its application. We would agree with APSA that any costs for repositioning containers should be part of the operator's voyage costs and an item for negotiation at the time of rate negotiations.

In addition, APSA claim there has been no change to service levels to South East Asia since the formation of the TFG. This is an inaccurate statement as set out on page 4 of the main TFG submission, which shows a substantial increase in the levels of service since 1995.

Loumbos Waste Paper

Loumbos makes reference to freight rates to Japan and to India but these areas are totally outside the scope of the TFG Agreement.

The company also claims overcharging to the extent of A$120 per container regarding the Emergency Bunker Surcharge (EBS) applied in the trade. First of all, the EBS is calculated on the basis of averaging the costs of the TFG Member Lines that have agreed among themselves to apply this charge (i.e. on a non-binding consensus basis). Loumbos base their claim on MISC vessels but they would be more fuel efficient than many vessels in the trade as they are only 2 years old.

Secondly, following is a more accurate calculation based on MISC vessels:

Northbound voyage = 14 days

1550 tonnes of bunker on board upon departure Singapore, therefore 775 tonnes for the NB voyage

Bunker price in Singapore on 6 June = $US170/tonne
@ A$0.58 = A$293/tonne

775 tonnes x A$293/tonne - A$227,075

Lines absorb the costs up to the base price, i.e. US$65.75 in Jan. 1999,
which @ A$0.6322 = A$104.

The average utilisation in MISC vessels for the trade area in June 2000 was 992 TEUs. Therefore, A$227,075 ÷ 992 = A$229
less Jan. 1999 base = A$104

= A$125/TEU (twenty foot equivalent unit)

As at June 2000, the EBS was A$130 per twenty foot container and A$220 per forty foot container; the difference being made up by less fuel efficient vessels and different utilisations across the range of TFG vessels. The current EBS is A$98 per twenty foot container and A$165 per forty foot container.

Loumbos claim no executive decision can be made in Australia, but this is incorrect as explained in the main TFG submission. In fact, increasingly the number of Lines vesting even financial trade management to their Australian representatives is growing.

Conclusion

It is of concern that a number of the submissions commented upon above complain about rates to areas outside the TFG sphere of influence and, more importantly, refer to surcharges such as a Peak Season Surcharge and Equipment Repositioning Surcharge that are not, and have never been, applied by TFG Member Lines.

Of paramount concern is that no reference is made to whether the TFG contributes to, and supports, the principal objects of Part X; in particular, 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, despite these objects being a major focus in the terms of reference for this inquiry.

The essential issue is whether the TFG Member Lines have had due regard to the need for services provided under that Agreement to be adequate, economic and efficient. Submissions that do not address that issue must raise the serious question of relevance.

Yours sincerely,

L.C. Russell
Chief Executive Officer