Australian Competition & Consumer Commission

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4 November 2005

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

Dear Mr Beaufort,

I am writing in reference to the Australian Peak Shippers Association's (APSA) complaint that the Australia to Europe Liner Association (AELA) contravened s. 10.41 of the *Trade Practices Act 1974* (the Act) regarding an increase in outward terminal handling charges which took effect on 28 July 2005.

Section 10.41 sets out the obligations of liner conferences in relation to negotiations with shipper bodies on negotiable shipping arrangements. Section 10.41 states that:

"(1) The parties to a registered conference agreement shall:

(a) take part in negotiations with a relevant designated shipper body in relation to negotiable shipping arrangements whenever reasonable requested by the shipper body, and consider the matters raised, and representations made, by the shipper body;

(b) 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; and

(c) provide an authorised officer with such information as the officer requires relating to the negotiations, notify an authorised officer of meetings to be held in the course of the negotiations, permit an authorised officer to be present at the meetings, and consider suggestions made by an authorised officer."

The Australian Competition and Consumer Commission (ACCC) has undertaken preliminary inquiries into the complaint raised by APSA and as a consequence of those inquiries has commenced an investigation pursuant to Part X, s. 10.48(2) of the Act.

The ACCC's understanding of the facts surrounding APSA's complaint are as follows.

- On 13 July 2005, AELA wrote to APSA informing it that negotiations with P&O Ports had resulted in increases in handling charges of 2.6 per cent from 1 April 2005 and that in order to recover these costs in future, outward terminal handling charges (OTHCs) would increase from 28 July 2005.
- On 14 July 2005, APSA wrote to AELA stating that it would need to sight the current contract between AELA and P&O Ports and the previous contract between AELA and P&O Ports in full.
- On 22 July 2005, AELA replied that the terms and conditions in its contracts with P&O Ports were confidential and therefore could not be sighted by APSA. AELA attached to its letter correspondence from P&O Ports confirming that a 2.6 per cent increase had been agreed across all tariff items effective 1 April 2005. APSA responded with a facsimile on the same day reiterating its request to view the contracts to confirm that the increases in OTHCs were justified.
- On 28 July 2005, the OTHCs were increased to the new rates set out in the letter of 13 July 2005. This was the first increase in OTHCs that AELA charges APSA since their introduction in 2000.
- On 11 August 2005, APSA wrote to AELA contending that AELA had a statutory obligation to provide the information it had requested.
- On 15 August 2005, AELA replied to APSA stating that it believed that it was required to provide information which was considered reasonably necessary for negotiations and attached a spreadsheet setting out details of P&O Ports's base tariff charges in 2005 compared to 2004 to confirm there had been a 2.6 per cent increase.

To assist in its investigation, the ACCC requests written responses from APSA to the following questions.

1. Does APSA consider this account of the facts to be correct and complete? If not, please provide any further information or corrections you consider necessary.

2. Why, in APSA's view, was the information requested by APSA reasonably necessary for the purposes of the negotiations?

3. Has APSA requested to sight contracts between AELA and P&O on any previous occasions? If so, what were the circumstances and what was AELA's response to the request?

4. Has APSA requested to sight contracts between other liner conferences and their stevedores on any occasions? If so, how many times, what were the circumstances of each request and how did the liner conferences respond?

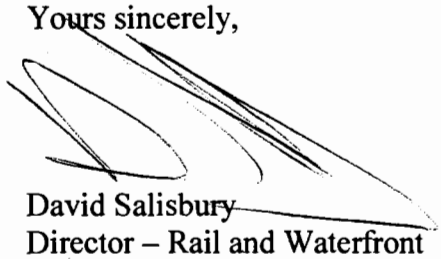
In addition to responses to the above questions, the ACCC requests that APSA provide it with copies of all correspondence between itself and AELA relevant to the increase in OTHCs which occurred this year and details of all discussions with AELA conducted with respect to the matter.

The ACCC requests that APSA respond to the above questions and provide the requested information by Friday 18 November 2005.

The ACCC will consider the information provided by the parties and may wish to discuss the matter further with you or seek additional information at a later time. The ACCC will proceed to make a Draft Decision on whether a contravention of s. 10.41 has occurred and interested parties will be given an opportunity to comment on the Draft Decision. After considering any comments from parties on the Draft Decision, the ACCC will then make a final decision and will make a recommendation to the Minister for Transport and Regional Services.

If you have any questions in relation to this matter, 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
Australian Competition and Consumer Commission