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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO PART X OF THE TRADE PRACTICES ACT 1974: INTERNATIONAL LINER CARGO SHIPPING

PROF J. SLOAN, Presiding Commissioner
MR G. POTTS, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 1 DECEMBER 2004, AT 1.31 PM

PROF SLOAN: Welcome to the Sydney public hearings for the Productivity Commission's Review of Part X of the Trade Practices Act relating to International Liner Cargo Shipping. I'm Judith Sloan and I am the Presiding Commissioner for this inquiry and I'm joined in this inquiry today by Gary Potts, who is the Associate Commissioner.

As most of you will be aware the Commission released its draft report on 22 October. In that report we set out a number of options for change, including the repeal of Part X and including options to limit the type of agreements provided with immunity from the regulations limiting anticompetitive behaviour. Prior to preparing the draft report the Commission talked to a wide range of people and organisations interested in the nature and scope of the regulation of international liner cargo shipping in Australia. We have received nearly 30 submissions - is that right; is that including the most recent ones - from interested parties. I'd like to express our thanks and those of the staff for the courtesy extended to us in our travels and deliberations so far and for the thoughtful contributions that so many have already made during the course of this inquiry. These hearings represent the next stage of the inquiry with an opportunity then to submit any final submissions by Friday, 17 December. We will be signing off on the final report provisionally by 23 February. That needs to be approved by the treasurer.

We would like to make these hearings as informal as possible, but remind participants that a full transcript will be taken and made available to all interested parties. At the end of the scheduled hearings today I'll provide an opportunity for any persons present to make an unscheduled oral presentation should they wish to do so. I would like to welcome to the hearing our first participant. Could you please for the record state your name and any organisation you represent. We've got two here?

MR McMASTER: Certainly. Hugh McMaster, New South Wales Road Transport Association.

MR MOYLAN: And Michael Moylan. I'm here representing the New South Wales Road Transport Association as a committee member of the container carrier section.

PROF SLOAN: And you also represent a company. Is that right?

MR MOYLAN: Johnstons Transport Industries.

PROF SLOAN: Right. What we find most useful is that if you'd like to just make a short presentation of your points of view and then we might ask some questions.

MR MOYLAN: That's fine.

MR McMASTER: I might start with an opening statement from an association, or an industry perspective.

PROF SLOAN: Yes.

MR McMASTER: And let might Mike perhaps give an operational perspective as well, in relation to this matter. New South Wales Road Transport Association was formed in 1890. It represents road transport operators across a wide range of areas of activity, and one of those areas relates to the transport of containers. The container industry in the Port of Sydney is probably worth - from the road side - around $300 million per year. The industry moves about 1 million TEU equivalent off the wharves at Port Botany. There's a growth rate of the order of 10 per cent present in volumes, but the long-term growth rate in the last 30 years is probably of the order of 7 per cent.

The Port of Sydney probably accounts for about 30 per cent of all containers that are moved through the four major ports of Australia - Sydney, Melbourne, Fremantle and Brisbane. As far as the road side is concerned, Sydney probably accounts for about a quarter of all moves; in other words, there's a high proportion of containers moved by rail through Sydney than the other three major ports. So that would put the value of the container industry nationally in the order of $1.2 billion and that only comprises the move from the terminal to the first point of destination, or the last point of origin in the case of exports. It doesn't include other aspects of the road transport task, as far as containers are concerned.

Given the underlying growth in industry costs and the underlying growth over the long term in containerised transport, in nominal terms the industry is growing about 10 per cent per year, so every seven years the industry is doubling in size. Therefore it's an important industry and it's important as we see it that the interface between the truck and the stevedore is as efficient as possible. However, we don't believe that applies in this case. We believe that the nature of the relationship between shipping lines and stevedores is more in favour of the shipping lines than the nature of the relationship between the stevedores and the road transport industry. We can't say for certain that exemption under the Trade Practices Act is the reason for that, but we certainly think that having that sort of exemption encourages business behaviour, which means the relative market power of shipping lines as opposed to stevedores is greater than would be the case if the industry - this is the shipping industry - operated in accordance with the rules that govern the operations of most businesses.

So what do I mean by that? What I mean is that the stevedores are expected, as we understand under the contracts they enter into with the shipping lines, to meet

certain performance targets. If they don't, as we understand it, there are penalties that apply. As far as the road stevedoring interface is concerned, there are no meaningful measures of performance that the industry, the road transport industry, can impose on the stevedoring industry, or are accepted by the stevedoring industry as part of that business relationship. So what that means is that the stevedore can compare the forces that drive their priorities based on the pressure put on them from the two sides of the transport chain at each end of their terminal.

Certainly stevedores regularly acknowledge in dealings with us - they view dealing with a ship as being a greater priority than dealing with road. It shouldn't be that way. What the stevedores should do is say, "My job is to manage a terminal. I've got to allocate the appropriate resources to make that terminal operate as efficiently as possible." That does not happen and it should happen. What we'd like to see is this inquiry, as part of a process of starting to drive that particular cultural change through stevedoring and extend, I guess, on the reforms that were implemented in the late 1990s. What has happened, and Mike will probably go into this in more detail, is that stevedores have passed cost down the line in the last six or seven years, so they've imposed charging and penalty regimes on road transport operators, but in return for that, they have not improved the turnaround time for trucks.

The other point I should make is that while ships can face delays because of poor performance by stevedores, so can trucks. The basic principles are the same. The nature of the delay may be more significant per occasion on the ship side because there are more containers involved and therefore the cost of delays per vessel would be greater than the cost of delays per truck. However, a lot more trucks service the land side than ships service the sea side. So therefore to some degree the two should balance out. It's roughly $70 an hour to run a container transport business and assuming 70 trucks pass through a stevedoring terminal in peak hours - which is roughly the numbers - a delay of one hour or in the movement of containers through a stevedoring terminal on the land side cost the road transport industry $5000 an hour. That's quite a significant amount of money in our view and it's ultimately the exporters and importers that pay for that.

We believe that the importers and exporters, the industry's clients, would ultimately benefit by having a more equal power relationship in market terms between the stevedore and the shipping lines on one hand, and the stevedore and the road transport operators on the other. We believe this is an important public policy issue that needs to be taken up through the appropriate government agencies, such as the Productivity Commission.

The other thing we'd like to draw your attention to is that the Bureau of Transport and Resource Economics, which measures the performance of stevedores,

only does it in terms of the ship to stevedoring interface; it does not conduct any independent measures on the stevedoring to land side interface - either road or rail. We believe that both sides are important and therefore they both deserve the same level of priority. If the government of the day is being fed information about the performance from the ship to stevedore interface, that will tend to - we believe - to cause stevedores to think, "That's where we have to focus our priorities as far as performance is concerned, and there are political and public policy forces that drive that outcome."

If the same level of attention is given to the ship to land side - the stevedoring to land side link, we believe the emphasis would change so that there is a more holistic analysis of the container supply chain. We have discussed this with the Bureau of Transport and Resource Economics and they agree it's worth doing, but the problem is resources. Certainly we believe that money would be very well spent by having independent analysis of the performance of the stevedores in terms of the stevedoring to land side link. That's all I want to say at this stage. Mike may want to add some more comments.

MR MOYLAN: I think you've summed it up, and I guess from the carriers' perspective, our concerns are the power relationship between the shipping companies and the stevedores and they are such that the contracts heavily favour the shipping lines, where the stevedores are on substantial penalties for failing to turn the vessels around within a prescribed period. All the measurement is determined around that; it's a crane rate per hour - and I refer to your last benchmarking report which analysed every possible way you could move a container - but there was no reference to the land side. It's all to do with the dock side and the crane rate and the ship turnaround and the tonnage, but nothing to do with trucks out the gate.

What this causes is the stevedores, because they're on penalties, allocate their resources in the terminal - ie, their cranes and their equipment - to servicing the ships. I guess one of my common statements is that plan A is the ship, plan B is the ship and plan C is the ship. At no time, other than when there's not a ship in, does the road get a look in and that's because of that power relationship. That power relationship, I guess over a period, has devolved so that the stevedores virtually have the same relative market power over the other stakeholders.

So what's taken place since 1998, when waterfront reform in earnest took place, is there's been very little improvement and, from our own company's data, the performance has gone downhill in terms of truck turnaround time and percentage of trucks serviced in an hour. It has deteriorated at some terminals, so we're no better off and the fact is that the stevedores have been able to use this power to push costs down the line. In other words, they've introduced a thing called vehicle booking system, which the carriers pay for, and we pay a hefty subscription fee to participate

in those booking schemes. There are various levels of entry. Under one scheme our company pays $30,000 up-front to participate in that scheme.

PROF SLOAN: Does that guarantee you - - -

MR MOYLAN: Nothing. That guarantees us access to the booking scheme on a notional slot basis. In other words, we line - - -

PROF SLOAN: Does it guarantee no delays?

MR MOYLAN: No, it guarantees nothing. There are no reciprocal penalties or guarantees within that booking system. It is access to their terminal. It is hard to liken it, but to - I'm trying to think of - - -

PROF SLOAN: A ticket to the outer in the MCG?

MR POTTS: Taxi charges at Essendon?

MR MOYLAN: Numerous things. I've thought about the airline booking system where the agent charges you and not the airline, sort of thing. Effectively the way we see it as an industry is that we're paying the IT cost of the booking system that they set up.

PROF SLOAN: And the privilege to collect the containers from the container wharf.

MR MOYLAN: Yes, and in addition - - -

MR POTTS: And has a privilege by the stevedores, too, in - - -

MR MOYLAN: Yes. There's very heavy penalties for carriers not conforming to what they describe as their business rules. Effectively, if you can think from a carrier's perspective, if you want to be in that market you've got to decide at what entry level you're going to participate. Carriers are classified so you can pay $500 a year and ring up for a slot if there are any available, or you can pay about $1500 a year and you can go in at a certain time and grab for slots with 150 other carriers, or you can pay $30,000 a year and go in with 25 other carriers and try and grab whatever slots are available to us without any guarantee.

Now, because there's no transparency in the system we don't know how many they put in, we don't know who got what, or how they got them, and there are further inequities and inefficiencies built into these systems whereby what they call the B-class carrier - which is the $30,000 a year carrier - gets certain privileges. One of

these privileges is that we can carry containers both ways. We can take one in and one out. Everyone else can't - only 25 carriers have the right to do that. As blind Freddy will tell you, that's a basic efficiency in any transport mode and we've discussed and argued that ad nauseam for 15 years: be like McDonalds, while we're here, give us something to take away.

PROF SLOAN: What do you think the basic cause of - I was just going to say it seems to me that there's not much of a sort of notion of door-to-door service in all of this, is there?

MR MOYLAN: No.

PROF SLOAN: No.

MR MOYLAN: If I could move on to a couple of other things - - -

PROF SLOAN: The chain is chopped up, so to speak.

MR MOYLAN: Yes, there is a glaring hole, and I think a lot is to do with return on investment. I think that the container terminals - take aside the vehicle booking system and the inequities - there are actually penalties for carriers' non-performance. So if we turn up one second late we incur a no-show penalty or a late arrival penalty which is $50 or, if we don't turn up at all because something went wrong, then we pay a $100 penalty. There is no reciprocal penalty applied to the terminal for failure to perform.

PROF SLOAN: What do you think are the primary causes of these delays? You've talked generally about their emphasis on getting the containers off the ships.

MR McMASTER: We think the primary causes of delays are probably alluded to in the recent ACCC report - that is, that there is probably inadequate capital investment in terms of cranes and inadequate manpower or personnel deployed to those cranes to the land side. The reason is that the stevedores know that if there is a hold-up on the land side, there is no financial penalty to them so they, as a routine company policy, allocate resources to the ship side first. It's fair to say that those stevedores at the moment are spending a bit of money on improving both the amount of terminal space, the efficient use of that terminal space and also they have recently, or are proposing to acquire more cranes.

But they are really only catching up. A lot of the equipment is old. There have been some pretty serious breakdowns, particularly at one of the terminals last year where a lot of cranes were out of action which caused huge delays on the land side, and I think even the ACCC report suggests that - and we agree with that - the lack of

equipment is causing congestion in the container chain, especially at peak times of the year such as around now.

PROF SLOAN: Do they let you know, though, if delays are going to occur?

MR MOYLAN: From time to time. I mean, there are message services on the computer but I guess if you look at the situation and how it's moved along, sometimes we get a message and sometimes we don't. One of the problems that we do have - yesterday, for instance, there were works on outside one of the terminals and the powerlines were cut by the people doing the work. This went on from around 2.00 to about 6 o'clock, but at no stage - we got a message on the computer screen saying that there was a power outage.

We had police come around to move the trucks and everything, but we've got bookings that we're committed to, clients that we're committed to down the line and no-one telling us other than they've got a power outage, "Come back tomorrow, we'll make it good," or "Don't come back," or "Stay there," or "Hide around the corner." I mean, we're looking for a direction and nothing happens, so we have to make all the decisions like calling our driver and telling him to wait there until 6.00 and if nothing happens, call this guy - so there's very little positive interaction. I guess what I refer to as that devolution in the power relationship is that they don't have to. There is no obligation to. There is no downside for them to or not to, because when it all comes down to the crunch, there is no penalty for not servicing us.

PROF SLOAN: One of the points you make in your submission, too, is that - okay, you are making a large number of short trips, but the trucking industry also is an industry characterised by very high fixed costs.

MR MOYLAN: Yes.

PROF SLOAN: So presumably when there are these delays and the like, you have your expensive truck sitting there.

MR McMASTER: That's right.

MR MOYLAN: One of the things that we're deeply concerned about is that with the inability to backload each truck that we send in the port area is one more trip we didn't have to make. There's a social cost to that. There's an environmental cost to that. There are considerations; there is occupational health and safety; there is drivers' working hours and driving hours that we have to consider. We're starting guys at 2.00 and 3.00 in the morning and we're trying to knock them off at lunchtime and they're caught. You know, the guy at 2.45 yesterday got out of the terminal at 6.05 and knocked off at 6.30. In all reasonable circumstances that was a 2 o'clock

time slot and on average we would have expected him to be back by 3.30 and knocked off. What do we do with that guy once he hits his driving hours and he's sitting on his pat at a container terminal?

MR POTTS: I presume you're looking back over the last five years. There must have been some improvement in the rate at which containers are actually moving out of the stevedoring area. I mean, given the improvement that has occurred in container movements per hour, in the last five or six years, unless there's an improvement in the number of containers leaving the stevedoring area, you'd have a very huge build-up in the number of containers at the port, wouldn't you?

MR MOYLAN: And that happens from time to time.

MR POTTS: From time to time but - - -

MR MOYLAN: Yes.

MR POTTS: - - - if you didn't have an improvement in the efficiency of the movement of containers out of the port then over time you'd just have a secular increase in the number of containers at the port itself, wouldn't you?

MR MOYLAN: No, basically what I'm saying - and my figures are for our company and they choose to argue with these from time to time - but the terminals measure - their measurement of truck turnaround is from when the truck driver lodges his documents at the delivery office and they're logged into the computer. Then that time is measured from that point until "job complete" is pressed on the straddle crane or the crane that loaded him. So if the truck is outside in the rank for two and a half hours that is not measured by them.

They're a selective measurement and I've had all sorts of measurements thrown at me over the years - you know, I should look at the standard deviation, I should look at the mode, I should look at kurtosis, I should look at skewness - but quite frankly, taking a frequency table, in 1998 one of the terminals serviced 51 per cent of our trucks in an hour. That's currently moved up to 54, so that's around about half, so there's a slight improvement. The other terminal serviced 50 per cent in 1998 and now services 41 per cent. So you're correct in what you're saying, that there is a point at which gridlock - but they are sort of keeping pace. How they've done that is they've gone to 24-hour-a day, seven-day-a-week operations.

That's their desire; it's not on the demand side. So this is a supply side desire to get more throughput, achieve more in a day, get more return on your asset - you work 24/7. Our customers - we haven't got a customer that wants a container on a Sunday, or a Friday night or a Saturday morning, but we go and pick them up at

these times because that is the only time available that we can get a time slot.

MR POTTS: So probably what's happening is there is more going through but in a way that's less convenient from your point of view - times when you have to pick up and how long it takes to pick up.

MR McMASTER: Certainly there are more containers going through the terminal, but where the industry pays is that it spends more time queuing outside and then, with the out of hours deliveries and increasing proportion are out of hours from the perspective of the carrier's clients - that means an increasing proportion of containers are staged through the transport carrier's yard and you're looking at a cost of - - -

PROF SLOAN: So they are essentially parked until the customer - - -

MR McMASTER: No, the container is usually dropped off and then the truck goes and does another job and then you've got to, the following day, pick that container up, put it back on a truck and take it out to the client's premises, when the client is open. So that's typically another $200 per trip that's added to that $300 per trip I mentioned earlier on, because the transport task is completed in two stages rather than one. Again, that's another example of passing cost down the line, apart from the costs that Mike mentioned earlier - such as the booking system cost, the penalties for arriving late or not turning up, and the cost of waiting for a longer than average period outside the terminal gate.

PROF SLOAN: Are you able to pass on these delays and - - -

MR MOYLAN: Some, but not all, because there are often circumstances that are beyond the client's control that we either - we've just got too many containers and we can't charge him for us having to work Saturday or bring those back to the yard. I mean, he gave us the documents in plenty of time. He had a reasonable expectation of us doing that job efficiently and it went haywire because of problems at the terminal. We don't get to charge that. Some we can charge, some we can't. But nevertheless, the cost for these activities such as 24/7 operation - which quite frankly I see as the terminals being able to cope with the volume and get a better return on their asset - now, the customers aren't out there screaming for them to open. The customer who gets one container of T-shirts once a fortnight isn't going to open Sunday.

Most clients are trying to operate an efficient factory or warehouse or distribution centre and they aren't able to work within the vagaries of what the wharves may serve them up day to day. So essentially the carrier becomes the buffer in between the terminal and the distribution centre or the operation, and you smooth out the peaks and the troughs and iron out the gaps for them, so you can give them

predicability of service. So I guess in essence we could be termed our own worst enemy for doing that, but we're servicing our client.

PROF SLOAN: Has it been a prosperous time for the trucking industry? There must have been a big increase in the amount of container movement at any rate?

MR McMASTER: There's certainly a huge increase in volumes. There's no doubt about that, but this is an industry that's got 200, 250-odd participants just serving the wharves in Sydney. In that situation it's hard to - and with a lot of participants seeing price as being the only card they can play in terms of offering a business service, it tends to drive the price down, or the returns down, so it's not really a profitable industry. It's an industry where entry is relatively easy and exit is just as easy and there are a lot of people who come in and leave the industry on an ongoing basis. Container transport is no different from most other sections of road transport, as far as that's concerned. So the structure and nature of the container transport industry in Sydney, and I would believe in the other major ports of Australia, means that the returns are pretty low.

PROF SLOAN: But are they higher, though, for groups that can offer a number of trucks to service different clients?

MR MOYLAN: People service various markets and certain customers, or certain carriers have a range of customers. It's a very complex mix. For instance, 65 per cent of the containers, or full containers are full coming in and 35 per cent are full going out, so of the 100 per cent you've got 65 this way and 35 that way. So to match up - and some people do more imports than exports; some people do more exports than imports - and certain people might service the electronics industry or the cotton industry - - -

PROF SLOAN: I guess why I was asking it was whether there was like almost equivalent of scheduled services being offered by some trucking companies, just as the shipping companies.

MR MOYLAN: To an extent I suppose the best equivalent to that would be that those stevedores have now heavily invested in the transport sector and they are offering what you could term door-to-door services with their vertically integrated road and rail operation. From a transport industry perspective that is one of our concerns; that the devolution of the power relationships in the stakeholders is such that terminals are able to optimise their return on their terminal operations, vertically integrate their transport arms and the next step is next year they propose to merge and run a vehicle booking system nationally with this merged entity. We're quite concerned about the control that will occur down the track, that the stevedores will be able to exert over container movements generally.

MR POTTS: I think you mentioned at the beginning that a very competitive industry which is obviously used was easy entry and exist, but can you give us some feeling for what effect that has on price stability in the industry, whether you find that because it's easy for firms to come in and out that they can undercut prices easily, so prices will tend to move around quite a lot, or whether because of the fact that it is a very competitive industry that prices tend to be fairly stable, depending on business conditions overall, but it's not so much the structure of the industry itself that's affecting price volatility or stability?

MR MOYLAN: To a degree I think that's commodity based, because I think there are a low value commodities that move in and out by container, that there is no specific time target, and that tends to be the ones that are more price sensitive and people who aren't in a hurry and have got a never-ending flood of containers coming in of low value goods always take the cheapest price. It's when you get upmarket - people importing machinery, people importing high-value goods that there are security issues or other factors - they will pay more for a particular service level. That part of the market tends to stay stable. It's that bottom end of the market that bounces around a fair bit.

MR McMASTER: There are certainly subsections of the industry that specialise in certain areas. Mike touched on some. There is a refrigerator container transport task that is performed by some in the industry. There are dangerous goods. There are furniture removalists, for example, and those industries are almost a subset, if you like, of the overall road side container industry. But aside from that, the only real - in the general freight area, as Mike said, the only real differentiations are based on the value of the goods in question or the time that the customer or client expects the goods to either leave their premises or arrive at their premises.

PROF SLOAN: I guess it's therefore quite hard to characterise the market. There will be price volatility for some segments and - - -

MR MOYLAN: Yes, at the - - -

PROF SLOAN: And other clients pay a premium for guaranteed service, they are also dependent on the value of the good being transported, I guess.

MR MOYLAN: Yes.

PROF SLOAN: I guess that's true outside the container ports as well.

MR McMASTER: It's true of transport generally. If you, as a client, want something overnight in Melbourne - - -

PROF SLOAN: You want a premium service.

MR McMASTER: - - - then you will pay more, compared with if you want it there in three days' time - if it's the same consignment. So you'll pay a premium to get it there on time.

MR MOYLAN: The problem is, though, with the booking systems and the nature of the operations there, there is absolutely no difference between carriers when we pull up at the gate. We're all the same.

PROF SLOAN: Yes.

MR MOYLAN: We have no priority. We can't offer a better service. It doesn't matter whether our drivers are better trained or our equipment is better, we're out there with the guy with a 25-year-old truck, in thongs and our service level is no better until we get back out the gate.

PROF SLOAN: Yes, because you're beholden to the stevedores at that point. Yes.

MR McMASTER: Yes, and the stevedores - and even though we may say the stevedores would like these other types of services offered, they don't appear to be interested in offering them. Their view is, "Well, this is the booking system - take it or leave it. If you don't want to be part of it, that's fine." You go and wait on what's called the random queue, which is a bit like a stand-by queue at an airport, and the service there is even more unreliable. That's their view. Why? Because they can get away with it. There is nothing in terms of the commercial relationship between an individual road transport operator, or the industry as a whole, that can put sufficient pressure on the stevedores to make them introduce changes to the booking system, that are necessarily in the interests of the supply chain, as opposed to the stevedore. It doesn't mean that we're totally ignored. They do take some of our views into account, but there are times that they don't, and they don't feel that they need to.

PROF SLOAN: I guess you're watching all the time for trade practices compliance on their part, too.

MR McMASTER: Certainly we are. We're certainly - - -

PROF SLOAN: Would you not be worried if they gave preferential treatment to their own trucking companies over the others?

MR McMASTER: I guess our view is that every road transport company should operate on a level playing field. It doesn't mean that the total industry needs to be

considered as a commodity, like say milk, but it means that the carriers who operate in particular submarkets of the container transport industry should have the same rights and the same obligations and be able to extract the same opportunities, impose the same pressures, if you like, on the stevedores as anybody else, so the market can work as best as possible.

PROF SLOAN: Do you have any other questions?

MR POTTS: No.

PROF SLOAN: That's a very useful contribution. I must admit I think it was a bit of the chain that we haven't paid any attention to and I think in our final report we'll try and take that up into our thinking because, after all, it's about the efficiency of the whole transport chain, not just bits of it.

MR MOYLAN: I guess we've been concerned that for far too many years and particularly since 1998, everyone has been standing on the dock looking out to sea. No-one has turned around and had a look at the land side.

PROF SLOAN: Yes.

MR MOYLAN: Which is vital.

PROF SLOAN: It may be more relevant to Part X than you even realise because, of course, Part X enforces a relationship between the shipping lines and the stevedores because the shipping lines negotiate the rates with the stevedores. So there is a kind of issue there, too.

MR MOYLAN: We certainly see that as - for want of a better description - a devolution of the power relationship that the shipping lines have over the stevedores and then that translates into the stevedores exercising their power over the other stakeholders.

PROF SLOAN: Yes. Thank you very much for your contribution.

MR McMASTER: Thank you very much.

PROF SLOAN: We will just have a little break.

PROF SLOAN: We now recommence the hearing. If the three of you could state your names and affiliations that would be a great help for the transcript.

MR KEMP: I'm Bob Kemp, general manager, Australia for P and O Nedlloyd.

MR RUSSELL: Llew Russell, chief executive officer of Shipping Australia Ltd.

MR HOUMAN: I am Soren Houman, director for Maersk Australia, which is the agency for Maersk Sealand.

PROF SLOAN: This is your time and we're here to listen. I just wanted to make a point about this issue of onus of proof - and maybe we can come back to that. I just would make the point that we are dealing in this with the NCP guidelines and essentially the onus of proof is on those who want to retain an anticompetitive arrangement. It doesn't just apply to monopolies and there seems to be some confusion in your second submission about that issue, so I'm quite happy to have a debate about it on transcript. It would be quite helpful because it seems to me that your argument is that the onus of proof should, in a sense, rest with the Commission.

But we would maintain that in fact we're very much bound by our terms of reference, in terms of the onus of proof being on those who need to demonstrate that a device such as Part X produces benefits greater than costs and that there is no alternative to Part X. I'm not trying to be combative.

MR RUSSELL: No, we're happy to - - -

PROF SLOAN: I guess the second point I might just say is that - and I'm trying to be open with you - I'm not sure it's entirely a numbers game. We wouldn't normally add up the sort of number of submissions who are for and the number of submissions who are against. We really are looking for the strength of the arguments. You know, there's a great sort of unwashed, unheard of out there and, of course, while the submissions are there in public we have spent quite a lot of time going around the country talking to various participants and particularly to some shipper groups who won't be making submissions, but we've obviously got additional market intelligence from that. I just don't want you to get the impression that we play a kind of numbers game in that sense.

MR RUSSELL: We didn't think that.

PROF SLOAN: You just gave us a table and I wondered whether you thought we did. There is a more general principle, I guess, that often - - -

MR RUSSELL: I can cover all that, yes.

PROF SLOAN: - - - users of regulated industries actually don't understand the cost of the regulation and are often not very well placed to understand what the counterfactual is. We could cite plenty of examples of that. Anyway, as I said, we're here to listen.

MR RUSSELL: We have an opening statement so I'll make that first.

PROF SLOAN: Excellent.

MR RUSSELL: And then, as I say to you, we're quite open to questions. You've raised a couple already which we may or may not cover. As I've said, we're very happy to answer the questions the Commission may have on supplementary submission, or our original submission, or on any other issue you wish to raise.

PROF SLOAN: Yes. If you wanted to make a "supplementary" submission that would be fine, too, of course.

MR RUSSELL: Thank you. I just make the point that Mr Houman and Mr Kemp are representing all the members of Shipping Australia, so although obviously they have first-hand experience but the three of us are representing all the members of Shipping Australia.

As pointed out in our supplementary submission Shipping Australia contends that the characteristics of international liner shipping are unique and do warrant industry-specific regulation. We appreciate that this is an area conducive to academic debate and acknowledge that there will be a range of views on which, if any, current economic theory supports the proposition there is any uniqueness to the industry's collective characteristics. However, we would urge the Commission to move beyond that debate, to assessing the objectives of this industry-specific regulation such as meeting the requirements of Australian liner exporters, for adequate economic and efficient shipping services, the cost competitiveness of the industry, the level of consultation and transparency that occurs under the present regime.

This should be considered in the context of the preferred option in the draft report which would replace Part X with a regime that will create uncertainty, introduce the high risk that Australia's international liner trading objectives will not be achieved, and all based on the vaguest assertions that a one size fits all approach will deliver improved services at lower costs. The draft report fails to adequately explain how treating international liner shipping like any other industry will not only increase the level of competition that presently prevails, but also - and perhaps more importantly - deliver a result that will enhance net public benefit.

The central theme of our supplementary submission is that unlike the one-off public benefit test inherent in the authorisation provisions - Part VII of the Trade Practices Act - Part X contains an ongoing and substantive test of public benefit by requiring the services offered by these types of agreements to be adequate, economic and efficient and for that test to be applied by those who pay and require such shipping services. We note that there is no definition of "net public benefit" in the rest of the Trade Practices Act.

Whilst it is not stated there could be a perception arising from the draft report that discussion agreements are new and have essentially arisen since the last review in 1999. This is incorrect. All the existing outward discussion agreements were in situ in 1999. Although some have grown in size - we acknowledge that - but this has not occurred in all places and whilst southbound there was an informal agreement, for example at that time, in the North and East Asia trade - this was subsequently formalised in the form of the registered agreement the Asia-Australia discussion agreement. The requirements to registering agreements only came into effect in March 2001. Contrary to the draft report, again discussion agreements do face a high level of competition, and there is no evidence presented to show that rates have risen faster or slower under these types of arrangements than they would under conference agreements.

The speed of vessels, frequently, reliability, scope of service such as additional port calls, have all been enhanced within the discussion agreement environment. The ability to discuss demand and service requirements, fix maximum rates when necessary and surcharge levels in addition, have provided the necessary confidence to undertake these additional investments and provide a degree of stability which has encouraged the necessary investments, as I said, by the shipping lines, parties to those agreements.

Shippers have been critical of the inability of discussion agreement parties to reach agreement with them and some shippers have complained that general rate increases have been announced with insufficient notice. Parties to discussion agreements have already altered their procedures to provide forward business plans to overcome that latter problem, and Shipping Australia is promoting the modification of Part X to satisfy the issue regarding agreements with shipper bodies and also a mechanism to encourage agreement if that mechanism is required.

In our view the statement under the key points of the draft report that the immunities provided by Part X are now more permissive than those available under United States and European regulations, is not an accurate statement. Caution must be exercised in comparing regulatory regimes, but the European regime in this area covering both conference and consortia activities, are essentially block exemptions

without the serious obligations placed on parties to agreements registered under Part X. And there has been no fundamental change in those regimes in Europe to date, although it is appreciated that regulation 4056 of 86 is currently being reviewed. There have been no major developments since the enactment of the Overseas Shipping Reform Act in the United States and it should be noted that there is a much greater degree of regulation in the United States than there is in Australia.

We dispute the definition of international conflict of laws contained in the draft report and can do no better than quote a leading world expert in this area whose opinion was attached to our original submission. We would ask the Commission to seek the views of the Attorney-General's Department on that very important issue. It is a view of SAL that a more productive area for debate is how to modify Part X to more effectively achieve its objectives. A number of proposals are advanced by SAL including a substantive streamlining of the existing provisions - and these are outlined in attachment A to our submission which scopes out those proposed changes.

Part VII authorisation procedures, even if the maximum period for authorisation is changed to six months, still presents in our view a more costly, uncertain and lengthy process when compared to Part X. The kinds of pricing arrangements that could be authorised still remains unclear. Even in the transition period we question what the situation would be with major changes to existing agreements registered under Part X, or new agreements that may arise, and how they can be handled in a timely and cost-effective fashion that does not require professional, economic or legal assistance, which in itself is a much more expensive process than that which applies under Part X.

We are concerned about such agreements having to wait for an appeal process if the authorisation is not granted by the ACCC. If the views of the majority of Australia's liner exporters - and I take your point about your consultations, but I reiterate: who do they represent? The majority of Australia's liner exporters - if they do not persuade the Commission from changing its current preferred option, we would urge the Commission to recommend that Australia wait for new developments in Europe and if the exemption is finally withdrawn there, then evaluate the implications of that significant change in the current worldwide regulatory environment instead of taking pre-emptive action, bearing in mind that Australia counts for less than 5 per cent of Australia's international liner trade. We believe that percentage is lower but that's the percentage that the BTRE estimated in 2003.

However, our strong recommendation is that the Commission in its final report change its preferred option to one of seeking modifications to Part X that will achieve the objectives recommended by the Commission in its draft report. That's our opening statement. Thank you.

PROF SLOAN: Now, Bob and Soren, do you want to add something, maybe from your company's perspective?

MR KEMP: If you don't mind perhaps we'd like to sort of engage in a bit more discussion. There are a few things that I'd like to ask, but I think it might muddy the landscape if we asked it too soon, that's all.

MR HOUMAN: I've got nothing at this stage, but let's see how the discussion goes and any questions we can assist with.

MR KEMP: I suppose from our perspective the natural thing for us to do is to look at what might happen as a result of potential changes, and without wishing to over-dramatise, I think we have slightly the view that perhaps the cure might be worse than the ailment. What worries us, I suppose, is the logical long-term result is that we have independent operations by independent carriers all trying to compete in what you would call a free market in the Australian waterfront end trade services.

The problem I see from our perspective is that very few of them are going to really have the opportunity to mount any sort of viable service at all. For the next foreseeable few years they're not going to be able to charter ships that will be able to come in and bolster their fleet, because the cost of it is simply unsustainable. There are very few carriers represented in Australia here internationally who really do have the ability on their own to mount any sort of meaningful service. The Australian export community has gotten used to a fixed day weekly operation to get their goods to the markets of the world. Even the two largest companies trading in international shipping here at the moment, that are represented in Australia anyway, would have to say to you, "We probably would not be able to mount an independent service on our own anyway." So is the net benefit really that the exporter is better off? That worries us. Yes, you can say we've got an inherent interest in maintaining the status quo, but at the end of the day who really wins?

PROF SLOAN: Llew, I think personally there's no point sort of debating each point in a kind of academic way. I think we should have a more general discussion about some of the propositions you raise. I guess the first one which I read and I found perhaps a little less than totally convincing was what you see as a very valuable registration process under Part X and some notion of the public interest being applied in the registration of those agreements.

The way we see it is that it would appear to be very much a tick the box arrangement and that basically registration is essentially automatic. The notion that there's any kind of inquiry approach to some public interest testing - that's not really how it works, and there don't seem to be examples of agreements that get knocked

back. I guess the final point I would make is that putting our staff on to analysing that list of registered agreements under Part X has basically been a nightmare. You might expect a benefit of regulation would be to have a very neat, up to date and informative list of what these agreements are, what these agreements do, the coverage and the parties involved and in fact that has not been, as far as we can see, an outcome of the regulation. I think its quite a strong criticism. I mean, obviously it's not the fault of your members necessarily, but there seem to be some essentially defunct agreements for example on the list. So maybe you'd like to come back and respond to that point, because that is an important point.

MR RUSSELL: Very important point, and we cover it in our supplementary submission. We don't accept this automatic registration process. In fact, it's rather lengthy in the sense it takes about six weeks. We go through a preliminary registration and that is not just a tick in the box. That is, first of all, to clarify that the exemptions being sought fit within section 10.08 of Part X which sets out the minimum criteria. In other words, you can't go outside that, unless it is of overall benefit to Australia's exporters and importers - I emphasise again, of overall benefit to Australia's exporters or importers. As I said before, there is no definition of public benefit in the Trade Practices Act, other than in Part X, in our view.

But getting back to that, then you check that there is a reasonable notice period of withdrawal, because that has to be not too long, in the context of the actual agreement. Thirdly, there is the issue of Australian law applying if there is a dispute. That's a requirement of Part X. As I said, it is the whole agreement that has to be registered, not part, between the parties. If it passes all those tests then the registrar gives it a tick, as you say, and then you are asked to negotiate minimum service levels and we note with some concern in the draft report that it's commented that APSA hasn't challenged 90 per cent of them, but this doesn't understand the history of them, which comes from 1989, that in fact there were years of debate and dispute over minimum service levels, their format, what they would cover, what provisions have to be included, such as equipment has to be provided in good order and condition as and when required, the number of port calls in Australia and overseas, the frequency, reliability, the capacity both for dry and reefer - refrigerated - cargoes.

These came into a general format so that the parties to agreements then understood what was required in providing not only the minimum service level itself, but the backup data that they do require. It's not just what you see on paper, but there is behind that a backup data that supports those statements. I do admit the import association, as we mentioned, has not once negotiated minimum service levels. We can't be held responsible for that. We don't know, except that as I say, most countries regulate their outwards trades. They claim jurisdiction, quite rightly, over both outward and inward, but they do regulate their outwards trades. On that basis the exporters seem to take - have more involvement in that area.

Assuming that that is agreed, then you apply for final registration. There is a number of administrative issues in relation to whether there were any disputes in coming to that conclusion, and then assuming that's all fine, it's then 30 days' notice. We have complained in the previous inquiry, and we mention again, we don't quite understand why there is 30 days, but one of the explanations was that it gives an opportunity for parties to at least know, to read the agreement before it actually comes into effect. We feel that's an area that can be streamlined.

But more importantly, what is the net public benefit? Is that assessed before the agreement comes into effect and therefore the prospective benefits of those agreements not being provided to the trade while a regulator such as the ACCC - a domestic competition regulator - tries to assess those benefits? Or is it one where the actual trade assess those benefits in an ongoing way after the agreement is in operation? That is our prime point; that the public benefit test is applied in an ongoing way during the operation of that agreement.

In relation to what was on the register, of course we had nothing to do with that; we're not the regulator, but - - -

PROF SLOAN: No, but I still find it difficult to grapple with the idea that there is any rigorous application of the public interest test under Part X. It is still basically a tick the box exercise and the sense which gives me a lot of unease is that a lot of different types of agreements which you must generate - at least different quantities of net public benefit - are essentially treated the same. So there's no kind of layering of the process in terms of the potential detriments to competition. Some would fly through but others - but they're essentially treated as well.

MR RUSSELL: I think it's a good question and it's a complicated answer because it is not competition for competition's sake. What Part X does, almost uniquely I think in the world - and I really believe that Australia has a comparative advantage in Part X, but that's anther whole area. What it does do in providing that adequate economic and efficient services test is a broader one than simply saying competition is good. Competition in bulk shipping is good because you've got a simple from one port to one port, one commodity and, depending on the supply and demand, at any one point in time, you will quote the price. At the moment a capesize vessel is now $US103,000 per day.

When you've got liner shipping - and this is really the crux of not only Part X but this inquiry, I suggest - where you've got the requirements to take little parcels regularly from schedule port to schedule port, irrespective of whether you fill your vessel or not, trying to keep to that frequency of service and regularity and scope of port calls with whatever is produced, so you could have a half-full ship, a 70 per cent

full ship, you keep going, has requirements that are quite different and broader than the pure application of what happens in bulk shipping. Really Part X, certainly since 1966, has recognised that and tried to apply I think a sophisticated public benefit test, clearly set out in the part itself.

You say it's automatic and that there is layering of agreements. I agree there's many different agreements and from the capacity estimates in the appendix C of the draft report, it's clear - there's a bit of misunderstanding of what capacity is being provided under those agreements - but really there are only three types in essence: you have the operation agreements which you can source through a joint service and they have their economic rationalisation reasons of sharing large capital assets and so on. They operate under an umbrella mostly. In fact, I can't think of any that don't. They operate under the umbrella of either a discussion agreement, which is the more common form of confidence, and there are still a few conferences left - as you point out, obviously to Europe where, as a point of interpretation, the EU Commission has denied that access to the exemptions provided by 4056.

Really, there's not a lot of different types of agreements. I mean, they do fall into fairly easy - and they are all connected. We believe that - or what we contend is that it's the ability to discuss supply and demand within a discussion agreement, particularly how you see it going in terms of demand collectively and how we see the capacity being provided, but not controlling capacity - that also seems to be a misapprehension - but that helps the ability at times to set, as I said, certainly not account rates or individual account rates, but simply across-the-board rates or surcharges, that gives that confidence for those agreements to hang together.

That's one of our concerns, I suppose, whether that proves in the end - if the government accepts - if you continue the recommendation and the government accepts that recommendation - is what would happen to those operational agreements, is a vexed question and one we find difficult to answer.

MR POTTS: You mentioned that there's an evaluation test to ensure in an ongoing sense that the public interest continues to be met and there's an economic and efficiency test. I think I'd find it helpful if you could explain to me how that's interpreted by the industry, what is meant by "economic and efficient" and how that process is actually implemented in practice to ensure that those criteria are met on an ongoing basis.

MR RUSSELL: Yes. First of all we have the designated peak shipper bodies and designated secondary shipper bodies and in many ways I think they're the watchkeepers or the monitors of that. In a more formal sense, there was a court case in 1980 that did assess those words "adequate economic and efficient" - the Bulkfridge case, with the then Mr Justice Deane who subsequently became

governor-general of Australia - claimed that it was difficult to assess - in other words, what he said was that - and I hope I get this right - "Adequate equals economic and efficient". First of all what's the legal interpretation of the words "economic and efficient"? I think that's not only in the eye of the beholder, in some ways there is - the people who pay and use the services under Part X assess that.

It's not just capacity to pay but for that amount of, if you like, rate or price, "What kind of service do I require and how are you going to provide it?" is an ongoing test of whether - from our point of view, from the carrier's point of view - it has to be economic otherwise it's obviously not going to be sustainable. Both parties assess that. Now, if either party - the carriers or the shippers - decide that they can't continue, then there are mechanisms, as I said, to assess whether the exemption should continue. In other words, if the Australian Peak Shippers Association feels that economic and efficient services are not being provided, then they have the capacity to bring that to the attention of the minister or, under the existing Part X, to go direct to the ACCC and seek an investigation of it.

The ACCC I think, in itself, has found difficulty in dealing with that because it is very different from domestic competition policy tests. It is, first of all, an international industry and I think the level of competition that prevails is surprising to the ACCC, where you have a situation that may be considered by them in parts to be slightly anticompetitive. It's always when they assess the actual results of their investigation that they find it difficult to provide a clear economic model that meets observed activities in the industry. But, really, it is an ongoing test in our view because it is the basis of what we provide. Of course you have under Part X also another series of reasons why the minister could withdraw the exemption. We feel some of those are probably better met by a financial penalty. Failure to give adequate notice may be bad, but to actually have your whole exemption withdrawn is a bit difficult. But that particular test of "adequate economic and efficient" we think is a very important one.

PROF SLOAN: I guess, though, you see, a sort of cynical type like me might think it doesn't look like a very discriminating test because agreements don't seem to ever get knocked back and agreements don't ever seem to get deregistered. It looks like - you talk about low compliance costs and certainty and the like, but that may in fact be a criticism of it, not actually as far as I'm concerned, praise. Maybe if you could give us examples of significant modifications that have had to be made to agreements and agreements that have been deregistered - we can't seem to find information on that at all.

MR RUSSELL: No agreement, to my view, has been deregistered for - I mean, some have been terminated obviously or lapsed, but I don't know of any agreement that's been deregistered. I think the reason for that is that Part X is a light-handed

form of regulation that encourages commercial resolution of disputes that arise. What you're saying is that well, from a regulation point of view, we'd like to see some action, but in reality - - -

PROF SLOAN: No, not we'd like to, but expect to.

MR RUSSELL: Expect to. Yes, but that would be if it was proved that economic and efficient services were not being provided. I think the reason is not because Part X does actually provide economic and efficient services, what it does is provide a framework within which those services are provided consistent with business cycles. As we said in our original and supplementary submission, the business cycle of demand and supply - and actually is recognised in the draft report - Part X or Part IV - it doesn't actually change that. Therefore if it's only trying to take off the, if you like, peaks and raise a little bit of the depths of the cycle, it does not result in the economic and efficient service not being provided.

So what I'm saying is that in fact where Part X has been successful is, in my view, acknowledging the cycles of shipping that we go through, but providing a framework which can cope with that. I think the other thing that Part X has done since it was, in its basic form, passed in 1966, is that it has been incredibly flexible to deal with all the changes. That's why it has enabled those changes to occur within that framework without saying, "Well, you know, it's a whole different type of regulatory system now required." Part X is not only unique in a lot of ways, but it also provides - as I said - a framework within which those normal commercial arrangements take place, to the point where I'd have to say I don't think anyone has been able to justify - and I don't mean been able, I think have not had reasonable cause to justify the withdrawal of the exemption.

I think we should take note of the fact that at a recent meeting of ASEAN and other shipper councils in Asia, Part X was put up as a model for emulation by the governments in those countries. So maybe the reason they think that Part X works is that - and this is the shippers themselves - it does stimulate, but it has always - "threat" is a bit strong of a word - behind the activities of Part X it is known by certainly the parties to agreements, that if they step right over the line they will have the exemption withdrawn. That, in itself, has an impact on their behaviour.

MR KEMP: My understanding is that Part X has always provided the ability for deregistration or absolutely. Perhaps it actually has been a vehicle that has allowed a proper agreement to be reached, the demands of the export and import community have been heard, and the agreements have been adjusted, services have been improved simply through the process of negotiation. Perhaps they haven't failed.

PROF SLOAN: Maybe we should move on to the issue of discussion agreements.

I think it would be true to say that there is a lot of unease out there about discussion agreements. I know you portrayed them as essentially non-binding, benign arrangements - the sort of view that's universal - and certainly some of these discussion agreements now appear to account for very high market shares. If you want to take up that issue - and of course they're not allowed under European law.

MR KEMP: But they are allowed under Asia, which is 60 per cent of our trade; US is under 10; and New Zealand. Discussion agreements - I wouldn't actually call them benign. I think that's going a bit far. What a discussion agreement I think recognises that conferences don't, in the old type of conference which started to really disintegrate actually in the early 1980s, because of really rapidly growing capacity of developing countries and their fleets - and the compulsion, if you like, for parties to conferences to apply a set rate was by commodity or even - not quite by shipper, but almost. Discussion about this evolved to recognise that change, that you can't enforce the rates agreed around a table. There are going to be individual service contracts that will depart, and that's a matter purely between an individual shipowner and a shipper. So discussion agreements tend to evolve to recognise that reality.

They were again accommodated under Part X because it made no distinction. But we recognise that there is some concern about discussion agreement. As I mentioned, it has been put to us that some of the - and they've been given the 30-day notice but some of the increases announced under discussion agreements, particularly southbound, have not had adequate notice and that's been put to us on a number of occasions, that it's difficult to negotiate with discussion agreement because they can't commit. You know, they can only say, "Well, we may agree with you now but we're going to walk out that door and do our own thing." You know, there is no compulsion. Shippers said, "We don't like that at all."

As I said, we've addressed that in our submission. We see those as problems in the carrier-shipowner relationship in relation to discussion agreements and we're prepared to address those.

PROF SLOAN: What would be your reaction to discussion agreements being made illegal?

MR RUSSELL: That would lead back to the sort of old conference, which does exist obviously. I mean, it would give the option I suppose of those that weren't members of conferences before. I've always found it a rather difficult description, by the way, when people say "conference, non-conference and joint discussion agreements," because discussion agreements are conference under Part X. But the reality is that you may find that those conferences get bigger. That's a difficult one to answer.

I really don't know what the result would be in that respect, but I think what would be the result on the trade, which is more important, is that you'd find that without that agreement of having some overall idea of capacity and demand in the trade and in terms of what the plans are, having the ability to have some stability in terms of general rate increases - and again, they may not actually be applied in the market, but they are an objective as it were - and also having surcharges there that are generally applied, and are fairly stable - if you split that up, in other words you get back to the situation that we described earlier where I don't think that those parties discussed were able to deliver the services that shippers require. I mean, at the end of the day, we get back to the - we pose the question: what investigation has been carried out to whether - you know, as you said, the counterfactual and the discussion agreement - would the rates have gone up or down?

In the AADA investigation by the ACCC this year, they actually weren't doing that. I mean, what we said was, "Look, are there excess profits being earned under this agreement? Is the investment not big enough? Are there constraints on capacity? What are the costs? Are they being covered or not?" The ACCC avoided those questions. They wanted to talk about a theoretical counterfactual that they said may or may not exist without the discussion agreement, but they actually couldn't come to a firm conclusion on it. So that's why I think discussion agreements do provide and meet that public benefit test.

MR KEMP: There are some in our industry who - sorry.

MR POTTS: I was just going to say I think you're right in saying that APSA see some difficulties in discussion agreements, which sort of suggests to me that if they see difficulties in the current arrangements, and if we go back to the test that we were just talking about, the economic and efficiency test, that you would rightfully expect that they would raise some difficulties against that test, whether it meets that criteria or not.

MR KEMP: They have a vested interest in the conference system being in place because they do have, under Part X, the authority to negotiate rates on behalf of a large number of Australian commodity and interest groups. Under discussion agreements they don't necessarily have that.

MR POTTS: But doesn't it suggest that they believe the current arrangements for DAs are not economic and efficient? Therefore isn't that a question mark about how seriously they take the application of the current test?

MR RUSSELL: That's a very good question.

PROF SLOAN: And particularly that some of these are discussion agreements

which account for very high market shares. You know, there is a lot of frustration out there.

MR KEMP: But under the old conference system, everything moves under a tariff - one price for all. By commodity - - -

PROF SLOAN: We're unlikely to go back to that system, are we?

MR KEMP: Okay. The development into discussion agreements from that system in my view allowed the lines to negotiate individual contracts with individual customers. It did give the free market back to the customer. The discussion agreement allowed the lines to talk about capacity demand. Capacity is something where we're in a "never seen before in a generation situation," in relation to capacity, and I dare say we won't see it again in another generation. But in the past 40 years the lines have been able, through this discussion process, to be able to measure the capacity to the demand and then the discussion agreements gave the trade, the individuals, the ability to negotiate what they saw as fair deals, and they weren't bound by one price for all. I honestly believe that was why the development took place, because it did give the carriers some measure of ability to talk about capacity and demand but still allowed the free market to dictate the price.

PROF SLOAN: Can I just make - and I'll also be devil's advocate, and I guess you've spent all our professional lives in this industry - - -

MR KEMP: Unfortunately.

PROF SLOAN: The kind of arrangements you describe - every player in every other industry would love them, but they're illegal.

MR KEMP: Yes, understand that.

PROF SLOAN: They'd all love to get together and talk about demand and supply and capacity intentions and price movements. They'd just think this was - but it's actually illegal, you see.

MR KEMP: But do they actually put the sort of assets - - -

PROF SLOAN: So there is a huge, huge onus of proof on you which I think as far as - and you can correct me if you think I'm wrong - all stems from the need to provide scheduled liner cargo shipping services - the schedule. We're not talking about bulk, we're not talking about trans - are we on the same playing field here?

MR RUSSELL: Yes, but it's more than schedules, but it is schedules.

PROF SLOAN: Yes.

MR RUSSELL: But it's more than that.

PROF SLOAN: Okay, but it seems to me that you talk of - I hear what you say and it sounds very nice. Everyone would love this. Therefore there's a huge onus of proof on you to tell me why the law should agree to it.

MR HOUMAN: Just a comment on APSA and APSA has been mentioned.

PROF SLOAN: Yes.

MR HOUMAN: I probably want to stress that APSA is not representing a lot of the export actually, and a dwindling number of exporters and it's easy to criticise what's there, but I dare say that the members of APSA would have no idea how it would be to operate for them in an environment where there was not access to discussion agreements. So it's very easy to criticise but they don't know what they are talking - we don't know what we are talking about. We can come up with a lot of theory of how it would be, and I don't think it would be very pleasant, but it's very easy to criticise without really knowing - because the world hasn't seen that for 75 years - at least to operate in an environment which is different from the one we are in.

Secondly, I see a couple of references and probably naturally so, to what is happening in Europe at the moment. And with all possible respect to PC, it's probably slightly high-handed to make a comparison between Australia and Europe. Europe is a much more mature market. Australia is probably the most expensive Western part of the world to operate today: far too many port calls are necessary; the highest port cost probably of any ports in the world; some of the lowest productivity. So issues that are not relevant in Europe any longer - and the requirement for - I mean, it's not because we like it that we are going together with our competitors on joint services. This is simply because it's not able to make the results that we need in this part of the world.

Certainly I'm representing the biggest carrier in the world. We are known for doing it alone. Down here we are part of several almost United Nation services, where everyone will have to chip in otherwise we wouldn't be here, because we are not here because we feel we have to be here. We are only here for the time being because we can see - we can just struggle to be here, but if conditions are changed then I'm sure that the principal I'm representing could use assets better elsewhere with the certainty that there would be a return. So I think that is really some of the threats that this nation is faced with, when they have to be very careful not to compare themselves to the big markets because that is where our principals have put

their assets. These are very, very expensive - unprecedentedly so at the moment and there is a shortage of tonnage and they will be pooled, because there is no real attractiveness compared to Europe.

PROF SLOAN: I might add actually I think 5 per cent sounds quite a high figure.

MR HOUMAN: Yes, I think it's a lot less.

PROF SLOAN: To tell you the truth. Most companies I know don't give up 5 per cent like - - -

MR POTTS: I think also we should emphasise the point that we're not saying that arrangements that do allow some sort of market sharing information and the like should not be allowed. All we're saying is that there is a process that's available to other economic agents that allows, provides for a serious assessment of what the net benefit is of such arrangements. We can't see why this particular industry shouldn't be subject to the same arrangements.

Just to carry that on, I think, and to carry on what Llew is saying, he seems to be very confident - and reading your submission it seems to me that you are very confident that these arrangements have a net public benefit. If you're so confident that there is a net public benefit then presumably there shouldn't be much trouble in convincing the ACCC.

MR RUSSELL: That sounds a very simple and easy and black-and-white answer.

MR POTTS: It probably is, but you can give me - - -

MR RUSSELL: And it's not that way, because there is a very fundamental problem in who is assessing that, and that is the ACCC - a national competition regulator basing on a net public benefit who determines the net public benefit. When there is an authorisation in advertising - we've got an authorisation - how many submissions do they receive from interested parties to those submissions and how does that affect their judgment, compared to what the industry requires? That Part X encourages an industry solution to that issue.

Can I just come back to that point you raised about discussion agreements. I've just given it a little bit of thought. I should have mentioned that APSA's view of discussion agreements is flavoured a bit by their concerns with the South-East Asian - that's an outward one - and the inward one for the last two investigations by the ACCC, the Asia-Australia discussion agreement. That's what's provided whether it's the ACCC and previously it's been others that have investigated the adequate economic and efficiency aspect, as I mentioned. In both those cases and in certainly

the South-East Asian one, they did not find when they looked at - they applied that test, they looked at the costs and revenues and the ACCC did not find reason that the exemption should be withdrawn.

But there were concerns by the shippers, including the Australian Peak Shippers Association at the time, that with the increasing coming off very low levels - in other words, there is, as I said a cyclic nature quite rapid in this industry, because there are influxes of capacity this industry finds hard to deal with; rates go down and then after a while demand builds up towards that capacity and it gets normal - it's a normal business cycle really, but it tends to be long one way and short the other from us. But the issue is that in those periods of when the demand is rising and obviously price is rising, then there are these concerns, and they arise - and I'd suggest they would have arisen whether it's discussion agreement or it's a conference - in that the rates are going up in their view more rapidly than they should.

That was their concern and they referred that - in fact, the TFG was referred by the minister after complaints from the shippers and, as I said, they found no reason to actually seek to withdraw the exemption. In the AADA case, towards the end of their investigation - they had a very narrow reference period - they found all of a sudden that the new capacity was coming into the trade quite dramatically, in fact in six months from 30 to 48 vessels, because as the rates came up it drew in the capacity, and therefore it was a bit hard for them to say, "Well, you know, now you should withdraw the exemption." So what I'm trying to say is - - -

PROF SLOAN: Although there were a few worrying sentences in that report, from your point of view, I would have thought.

MR RUSSELL: There were, but certainly we found it peculiar that they said they couldn't get the information (a) from what we provided but (b) as I said in our report they have legal means to force that information if they need it.

PROF SLOAN: Yes, I know, but that's a sort of recurring theme around the world, to the extent that the onus of proof is on the regulators rather than the industry. The industry holds the information, not the regulators, and that of course is one of the propositions that the ACCC is pushing very strongly and which has been an important point in Europe as well; that there is a tremendous frustration from the regulators and indeed the OECD's report, too, that it is very, very difficult from outside the industry to source the information required.

MR RUSSELL: But as you mentioned before, that's not new in any industry.

PROF SLOAN: No, that is not new.

MR RUSSELL: You could say, "As regulator I find it difficult because I don't have perfect information in relation to any industry - - - "

PROF SLOAN: Yes, but it's who is in the best position to provide it.

MR RUSSELL: Yes, but they can force it if they need to.

PROF SLOAN: This issue, though, that we are all - I mean, I don't think there's any point in slanging off at APSA or whatever - they are after all the primary designated group. There seems to be a lot of unease about the whole idea of countervailing power which really is a cornerstone of Part X. Have you got any comments about that? I think there seems frustration that there is a requirement to negotiate. There's no requirement to actually reach an agreement and I think the feeling is that it has not been working well in recent years.

MR RUSSELL: We address that in our supplementary submission. First of all, there is nothing in the draft report that indicates results of individual negotiations of actually what's happened, but irrespective of that, we feel that in fact that's almost what makes Part X unique in the world. The word "permissive" is an interesting expression, but it's not in the sense that it promotes consultation and transparency. When you say "reach agreement" clearly if I'm paying - you know, I don't want to pay anything; you know, there is no price control in this country.

But what it does do - Part X - and has really from 1966, it encourages and in fact more than encourages - it demands that you provide reasonably necessary information for those negotiations to take place; that they are meaningful - and people say, "What does meaningful mean?" But at the end of the day there is a lot of discussions - a recent one with the Australian Shippers Association, AELA - a liner association - reached agreement on a GRI with APSA. There are ones relating to minimum service levels, that I mentioned, and sometimes more information is requested; it's provided and there's toing and froing and they come up with an agreement. There have been ones where - there have certainly been a lot of occasions where lines have put a proposition to the shippers and have altered that proposition as a result of the negotiations and now we can tabulate all that.

It's been a situation where lines have found it quite obviously difficult under this legislation but they've done it in recognition of the overall arrangements that apply under Part X. In other words, it's in their interests and in the interests of the shippers. It can't be in the interests of one party. But countervailing is again an interesting concept. Countervailing tends to put to people on an equal level, whereas individual situations that may be one or the other at different levels - I think countervailing is the wrong word, in that it's not necessarily matching power against power. What you're doing is you're giving the customers of this - not an independent

regulator, competition regulator - you're giving the customers the opportunity to negotiate the terms and conditions of service directly with the carriers, and the carriers have to front up to these negotiations.

The comment in the draft report that they're better off with more competition I think is one of the problems with the whole draft report. There's a proposition in there that there will be more competition, everyone is going to be better off, but there is no model in there - - -

PROF SLOAN: Generally true, Llew.

MR RUSSELL: - - - to say that. Not always. In the sense that we can compete, we can put our vessels - we have small vessels because we can't afford big vessels and we've got less vessels, but we can put them into Sydney and they sit there for two weeks and we fill the ship; we'll go to one port - Shanghai - discharge and come back again. We can provide that service. Maybe in competition that's what will happen, but what I'm saying is it won't meet the requirements.

PROF SLOAN: Because one of the flavours of your submission is that it is a very competitive industry.

MR RUSSELL: It is.

PROF SLOAN: Which is good for users.

MR RUSSELL: Yes, but it is a competitive industry, but that is the point I'm making. To tear down that regulatory system and say that a new arrangement will provide more competition - that's the one we're questioning. We're saying, "Can you describe to us how that more competition would provide better services, specialised equipment, where you want it, in good order and condition, all the range of" - it's not just scheduled services - all the requirements that liner carriers provide - and they don't do it out of the goodness of their heart, they're doing it as a business, I understand completely - but where changing the system will lead to a better situation for the shippers, the exporters, liner exporters of Australia.

PROF SLOAN: Can I just clarify: you don't really like the term "countervailing power"?

MR RUSSELL: That connotes equal power.

PROF SLOAN: I think it's deliberately used in the context if you're providing immunity to the carriers than there is a sort of notion that what one does is allow the sort of collective negotiation power - which might otherwise be illegal, I might add -

for the shippers. But you're not questioning the construct, are you?

MR RUSSELL: No.

PROF SLOAN: No.

MR RUSSELL: No, I mean, you can describe it as countervailing power. I just think that's a fairly loose term, but the objective is to - the objective originally in Part X was to provide accounting - - -

PROF SLOAN: I guess we were just posing the question whether anything really useful comes out of these negotiations, and there certainly seem to be some frustrations there.

MR RUSSELL: When we look at the European situation - and I was in Brussels on 4 December last year - the shippers there, the European Shippers Council were totally opposed to carriers and I know the carriers have approached them for consultation discussions, just to discuss - "Let's talk about the trade, let's talk about the conditions of the trade" - and they've refused to meet them. I don't know why.

I shouldn't say why; it's speculation - but they're totally opposed to them as a group and I contrast this with the situation in Australia and I have to say we're so far ahead, and that's what I said and they were actually amazed that someone from the north-south trade appeared in Europe, but on behalf of the then European Liner Affairs Association, I made the point that here in Australia we have this consultation mechanism with shippers that does deliver real results, and they found that quite interesting, compared to the situation that prevails in Europe. I'd imagine it prevails in a lot of other areas in the world, but certainly I think we've got a situation here which tends to balance the interests of both parties.

MR POTTS: Whatever we call it, whether it's countervailing power or something else, with the relative decline in the importance of conference agreements, with the emergence of discussion agreements and therefore there's less price-setting through these agreements than before, can we take it from that, there is some relative decline in the countervailing power of exporters vis-a-vis the previous situation?

MR RUSSELL: Not at all. If you have, for example, a surcharge, a terminal handling charge, whether it's inward or outward, that you are trying to increase because you can prove that you have had the increases in costs, whether it's a discussion agreement or a conference, the same rules apply. Many more recent negotiations have been with discussion agreements, of course, because they're now much more prevalent. As I said before, they've been here for a long while; it's not a new phenomenon. Quite honestly they are groups, both secondary designated

shipper bodies, particularly those designated for negotiations and peak shipper bodies - negotiate with discussion agreements.

There are a few conferences I mentioned, but some conferences like the Australian Northbound Shipping Conference is sort of in abeyance because the members are members of discussion agreement. So what I'm saying though is that they brought in some negotiations just the same as they would as if they were a conference. I don't think there has been, as such, a diminution in that area. I think what the Australian Peak Shippers Association does, and I think it's quite right - it has a policy not so much have a right under Part X - but as a policy they avoid getting involved in what are called the commercial rates. In other words the rates below the tariff or the rates that are obviously individual service contract rates or commercial rates either decided between the parties - because they recognise that if you have those negotiations, then I have an amount of cargo and you're providing some shipping space and we come to an agreement on the price, and they don't have any cargo to offer.

PROF SLOAN: No. I'm surprised you've answered in that way because I would have thought the world had moved on a lot on that. Basically the large shippers are doing their own deals.

MR RUSSELL: Yes.

PROF SLOAN: And so once the closed conferences, fixed tariff pooling and everything went, the world changed basically.

MR RUSSELL: Yes.

PROF SLOAN: So APSA's representativeness has actually declined quite dramatically because all the large shippers do their own thing through individual service contracts and therefore they're only dealing with smaller and mixed and intermittent and the like. I don't know whether you agree with my view of the world. I'd like to move on to this confidential individual service contract which is in our suite of options. Basically we accept that there is a lot of individual service contract going on, but we actually do worry that it's not always confidential - and we've had examples of that, and we've had parties who've been very annoyed by the non-confidentiality of it. I guess there are common law remedies, but I don't think you go off and sue someone who is going to be a supplier on an ongoing basis. It seems to me therefore there's some benefit in having some statutory based confidentiality, like the Americans, which seems to have made a very, very big difference in America. Do you object to a statutory scheme of confidential - - -

MR RUSSELL: No, we don't.

PROF SLOAN: - - - individual service contracts?

MR RUSSELL: As we put in our supplementary submission, we're recommending them. Certainly it doesn't happen in the American trade - I am aware of one or two instances, but that's certainly very isolated. I would hate the perception to be gained that there are these discussions about individuals. It's extremely rare, but it has come to my attention once or twice that it has been - and clearly that is something that shouldn't be. We're happy because in most cases it's the carrier themselves who don't want to reveal their own individual contracts, for obvious reasons, so we don't see it making a major difference in the sense that we're happy to see it as confidential.

I don't quite agree with you about the American situation because - although to some extent American was quite different from Australia when they introduced OSRA; they had what they called the "me too" clause. So in America, if you had a rate, you gave anyone a rate and the other person was in a similar situation, you had to give them the same rate. They tried to break that with the OSRA and quite rightly, and they said, "Maybe in the American environment it assisted that development." But here, in the Australian environment, it's always been - I mean, it may not be officially confidential, but it seemed to have been kept pretty quiet. It's very, very rare - although, as I said, there are a couple of occasions that it has occurred.

But what I want to emphasise - you are saying you are surprised at why I answered that way. This is a fundamental point of our whole submission and the supplementary submission, is that we need the ability to discuss prices in a certain way. Now, it's not the old way that you're saying because, as I said, that's pretty well gone, but what we absolutely do need is the capacity to discuss (a) surcharges amongst ourselves; (b) a general rate increase. Let's say it's $200 a container, because they went down $400 last year and we're trying to recover $200 this year. Now, the lines, after they discuss that, go out in the marketplace and some lines only get 100 and others get to 150, but the ability to at least have an objective is very important to them.

If you remove the ability to do that, then you will impact the whole arrangements underneath unless we come back to authorisation - but let's put that aside for the moment - which we've explained in some detail, our problems with authorisation. But if you put that aside the other big thing is, in my view - you mentioned about the capacity to collude, to discuss demand and supply - it all comes together and it gives those individual parties the consortia of individual lines, the ability to go out with some knowledge of what's happening collectively. That doesn't mean they actually go out and apply it, but it gives them the confidence and the capacity to go out and come to the arrangements that they do. As I said, that is not an old - that's moved on; we moved with the times, but it's become more restrictive,

but it is still important.

MR POTTS: I just wanted to ask a question about rate of return in the industry and I guess particularly the Maersk representative, if I could. This has been a bit of a conundrum for us, that all the available public data suggests that the return on capital for this industry is extremely low, and yet we keep - the evidence suggests that despite the low return on capital, shipping lines are building bigger and bigger vessels, creating a situation where there seems to be quite a bit of supply in the market and opportunities for segmentation in terms of the size of vessels. So as economists I guess we find it difficult to reconcile these facts, so given that we do have a Maersk representative here, one of the largest carriers in the world, could you provide some light on that for us that would help reconcile the - - -

MR HOUMAN: First of all, I think - wasn't there even a footnote there suggesting that it's appreciated - - -

MR POTTS: There's something; I'm just trying to find it.

MR HOUMAN: - - - it's not only the shipping activities? The AP Moller-Maersk group, which is a very large organisation employing 100,000 people globally, have a couple of legs to stand on. One is certainly shipping, but the other and very significant one is oil and gas exploration and production, and that is particularly in the Danish North Sea and that is a significant shop and not least with these oil prices, so you would find - because fortunately or unfortunately we are not under an obligation to split our company down in container shipping and tankers as well. So this number is clearly indicating the whole group and a very profitable oil and gas part of the AP Moller-Maersk group.

So our rate of return is no different from the rest of the industry. Probably we have been a bit below. We are known for buying or building very expensive ships and being very selective in where and how we do business, so you'll probably find that we are a bit hard on ourselves, so I would like you to disregard that number in comparison with the other carriers and probably take the other carriers who are pure, most of them - - -

MR POTTS: But could you give us an indication of what your return on capital is for your shipping - - -

MR HOUMAN: No, I can't, and I am sure that I wouldn't be allowed to from the company, and I don't even think we have - if you take the Maersk shipping part you'll have product tankers. We have the biggest fleet of product tankers in the world, of gas carriers, of supply - offshore supply ships, the biggest fleet in the world. We'll have some of the biggest tugboat fleets in the world, so you wouldn't get a

container fleet - I don't know the rate of return on pure container shipping for the AP Moller-Maersk group. It's not even available, certainly not to me.

PROF SLOAN: Are you not a publicly listed company?

MR HOUMAN: We are.

PROF SLOAN: Therefore international accounting standards would require segmented accounting reporting.

MR HOUMAN: Not split down on a container ship, no.

PROF SLOAN: Maybe not. Have a look.

MR POTTS: But there is some sort of cross-allocation, though, is there, or cross-subsidisation of capital within the group?

MR HOUMAN: Absolutely. Oil and gas is very profitable these years. The company I work for, we're - - -

MR POTTS: But surely it's not a below market return on capital that you're getting for liner shipping?

MR HOUMAN: No, I think we would - AP Moller-Maersk is a very wealthy company based on many years of trading and clever trading, but on the shipping part we are as vulnerable to the cyclical nature of shipping as any of our competitors.

MR POTTS: And yet there is all this additional supply coming on stream.

MR HOUMAN: Is there? Is there suppliers? No.

MR POTTS: I think there is, with these extra large vessels.

MR HOUMAN: No, you see, that's certainly a building spree going on, simply because of the world trade and that is not necessarily a signal of wealth among the carriers. You could argue quite to the contrary: the biggest ships, the lower unit cost. So what carriers are seeking now is to get away from the ships we unfortunately are forced to trade with down here, because the costs are so and the volumes are so that we can't deploy some of the bigger ships where we would have a lower unit cost.

MR POTTS: So it's similar to the airline industries.

MR HOUMAN: Absolutely. The bigger the better in this trade if the volume is there, but has also been claimed, we call here come sun or rain. There will be times of the year when we, as a private company, are providing tonnage to this coast and we load it by 40 per cent and then have to leave again, because we have committed that we'll have a service. Mind you, these are private entities and yes, we are doing it because we can see a future, but we also are making the biggest wheels in this country run on private initiative, like no other industry in the - you are trying to compare to other industries but there are no other industries - - -

MR POTTS: But it says large supply in the global market. If there is large supply in the global market, which is the way we've been heading in this discussion, I can't see why liner services would wish to withdraw from a market opportunity in any part of the world, particularly one that counts for 5 per cent of world trade.

MR HOUMAN: Because of uncertainty and because of shortage of tonnage. There is an unprecedented shortage of tonnage and there will be for a number of years going forward. So what I'm saying is there are much bigger opportunities with certainty in other trades of the world, and not least the east-west trades and trades involving South America where there is enormous demand. As an agent down here I'm under demand all the time to justify why we keep the ships in the Australian trade - because there is that much more money to be made in other trades. Certainly we are not some who are known for fly-by-night, but if the whole fundamental suddenly disappears there will be many carriers who will think twice about staying, and certainly the fact if consortia will no longer be possible, there will be years where Australia can't come to market.

MR RUSSELL: I would add that you have a lot of smaller shippers. Our larger liner - I can only think of a couple that would ship more than 25,000 TEU a year. In Europe, freight forwarders pack 1000 containers a week. I mean, the scale is unbelievable. In one direction the Far East Freight Conference - they ship more than the whole of Australia's liner trade, in one direction from Europe to Asia. Or Asia to Europe, sorry. In fact, that's the small leg - is the Europe-Asia. But Asia to Europe would ship over 4 million TEUs a year, and that's just one leg - is the whole of Australia's trade.

The north-south trade, besides being highly specialised, we have a large amount of refrigerated equipment which often has to come back empty. In fact, with the high demand southbound, particularly from China and east Asia generally - north and east Asia - we're finding that people are saying, "Why should I fill my slot with an empty refrigerated container when I can fill it with a dry 40-foot container?" That's the point I'm making: there are a lot of ways we can move our service around and not meet the requirements of Australia's shippers, but it's quite different - the north-south trade. You can start to compare South America, South Africa and

Australia and New Zealand in one way, but to say we're the same just because we're 5 per cent of the world's trade, or less than 5 per cent, is not - you know, completely different.

PROF SLOAN: I don't think we're saying that, Llew. But you don't want to overemphasise the koala factor either.

MR RUSSELL: No, of course it's a factor and in some ways lines are here because they have world, if you like, tenders which require - you know, you pick up trades that aren't too good, such as Australia. But you do have the situation where if it became difficult, particularly if the rates decline even further in the Australian trades, some lines - not all, but some - are going to reconsider this. All we're saying - we're not saying that we're going to be left without anything, but we are saying there could be changes that wouldn't meet our requirements.

MR KEMP: Just on the question of capacity, I think at the beginning of this year the best estimates were that with these more than 600 new container ships that are due to come out of the yards over the next couple of years, that by the end of 2005, first half of 2006, exactly as you were saying, the demand situation would quickly be outstripped by the supply of capacity in the market. The very latest information that we've been hearing now for the last three months is that the world trade growth, mostly underpinned by China, is such that most of that increased capacity over the next two years at least will be absorbed and that we won't be in a situation where we're going to see very much difference at all in the improvement of the capacity of container shipping space. That's happened quite quickly.

MR RUSSELL: But at the end of those two years we might see the opposite.

MR KEMP: Absolutely. I mean, it will come; it's just a question of when. We live in a very small goldfish-bowl. We can see the other side very clearly.

PROF SLOAN: I guess, though, just as we're kind of sceptical probably of koala factors, because that gets raised in lots of our inquiries, we're also probably slightly sceptical of industries which say that they're different from all other industries. I guess that's why - - -

MR RUSSELL: And we are.

PROF SLOAN: You know, every industry is special actually.

MR RUSSELL: I understand that debate but I suppose - - -

PROF SLOAN: And the fact that it is a declining cost industry and the like.

MR RUSSELL: You may have just run into one that's different. That's the point I'm making.

PROF SLOAN: No, I run into ones that are always different, it's just whether they require different treatment under the law, is the case.

MR RUSSELL: Exactly, and that's why I think it should be output oriented and I think a regulatory system should be output oriented. In other words, what is the result of the regulation? We have a distorted market here. You mentioned, "Why are people building big ships?" As I mentioned, there are subsidies in the world of all sorts. There are shipbuilding subsidies. I mean, the OECD - you mentioned the OECD has been trying to get South Korea increase its shipbuilding prices. They believe they're dumping them - in inverted commas. For whatever reason - - -

PROF SLOAN: I say, "Come on down," because that's great for - - -

MR RUSSELL: That's so, but - - -

PROF SLOAN: If the Koreans want to subsidise their shipbuilding industry that's great for Australia.

MR RUSSELL: Yes, and probably the world. It is providing capacity from our point of view - that's the point I make. "Why are we building big ships" - the question was - "with rates of return so low?" I'm answering that by saying there is a lot of distortion in the market which - from different types of taxation incentives or direct operating subsidies or shipbuilding subsidies - in fact is the reason. So you're not building because, you know, "I'm making heaps of money and I'm going to make more." The fact is they're building for various reasons.

PROF SLOAN: There still does seem to be a lot of investment in the market, in the kind of freer end of the market, too.

MR HOUMAN: In the freezer?

PROF SLOAN: In the less distorted bit of the market that companies like yours, I guess, are investing in new ships, which suggests to us that you can earn at least adequate rates of return on these investments because you wouldn't keep doing it after a while if that was not the case.

MR HOUMAN: Is that a point you're trying to make, that they are making returns?

PROF SLOAN: Yes, because one of the conundrums, or one of the propositions

that was put to us is that this industry faces very low rates of return and of course if you therefore were to alter the regulatory arrangements in any way, you know, they'll go out of business, they won't come here.

MR HOUMAN: But, mind you, all these ships that are being built now are to go into the east-west trades, not the north-south, where there is better - - -

PROF SLOAN: Yes, but that will then of course generate - - -

MR POTTS: That will displace others - - -

MR HOUMAN: Yes, where there are other - - -

PROF SLOAN: They're long-lasting assets so that will generate a sort of flow-on effect with other - of course, a lot of the big ships can't come here because the ports aren't big enough.

MR HOUMAN: Exactly, so all these 600 ships - none of those.

MR POTTS: It will displace others, though; they will - - -

MR HOUMAN: Don't be too sure, because the bigger the ships, the fewer ports; the more requirements for feeder ships coming in from various Asian ports. These very big ships are becoming now - they will call at fewer ports. If they call at as many ports as the smaller ships, that are relative to what are employed today, they will take too long. They are 20 times too long. So the bigger the ships, the fewer the ports. The bigger exchanges, the more feeder ships coming in and we're talking 4000 or 5000 TEU feeder ships, mind you. So, no, you cannot take it for granted that it will cascade down to the Australian market.

Mind you, with this very small, relatively, market as Australia is, nowhere else in the world do you have such a small market, where you are required to call at last four, maybe even five ports. Enormous cost is associated with that. England, which is many times bigger - in the United Kingdom in terms of cargo throughput than Australia - you have one or maybe two ports - you have Felixstowe or you have Southampton. Here you need to go to Brisbane, Sydney, Melbourne, often Adelaide and, most of the time, Fremantle. It's very costly. In other countries you have very sophisticated infrastructure which means you can call, in many places, one port and that is distributed out. Here it's not like that, so it is very costly. As I say, probably some of the highest port costs in the world, lowest productivity, highest stevedoring costs.

PROF SLOAN: We are quite proud of our improvement in productivity at the

ports.

MR POTTS: We thought it was up near best practice now, but you don't think so? That's what we were told when we visited one of the ports - stevedores are now pretty near best practice.

MR HOUMAN: I'm on a microphone so I shouldn't - but, no, you're still talking about probably one of the lowest productivities in the Western world here.

MR POTTS: Really?

MR HOUMAN: Yes. I should say the whole world, because Asia is probably - I made a comparison the other day with one of the ports down here that was similar to one of the out ports in Indonesia, productivity-wise. Surabaya, if you want to know. So that's the level we are at, at the moment. We hardly reach 20 moves per crane hour; Japan we would do 40 to 50 moves per crane hour, albeit that it's not that relevant as we were simply talking berth productivity - but, no, let's not fool ourselves - a big improvement over the last 10 years, but still far away from where we ought to be.

PROF SLOAN: Are there other issues you want to raise?

MR POTTS: No, thanks.

PROF SLOAN: There are some points of detail which I suggest we deal with out of sessions. There are some figures and in a sense we treat the ACIL submission as part of your submission. Is that right?

MR RUSSELL: Yes, they are presenting in Melbourne next Monday and we can see - - -

PROF SLOAN: I think there are a few technical issues which we need to get to the bottom of actually, because that's how we interpret the data that actually becomes quite important. There is that issue of what I regard as your rather jaundiced view of the ACCC but maybe we'll just let that - - -

MR KEMP: Maybe we will just call it less than totally international.

PROF SLOAN: Yes, they're used to dealing with internationalised industries, so I think that's not a fair criticism, but essentially - - -

MR KEMP: It wasn't necessarily a criticism, just an observation.

PROF SLOAN: - - - the thrust of your submission is to move enforcement and inquiry to the Department of Transport.

MR RUSSELL: And Department of Foreign Affairs and Trade and ACCC, but if that panel can't resolve the particular issue the final - it would go to the minister, who could refer it to the ACCC. We see the ACCC as being, in its full force and effect, a back-up area. The point that the chairman of the ACCC has made recently about cartels internationally - and he's referring there to cooperation where you break the law in those countries and you break the law in Australia and how can they cooperate to enforce that law collectively. It's quite a different situation here where you'd have possibly breaking of law in Australia, but it's quite legal in the country where you're asking their enforcement agencies to cooperate. That's an issue that doesn't come out in this report.

PROF SLOAN: No. I think we probably need to think a bit more about that, yes.

MR POTTS: We take your point, though.

PROF SLOAN: Are there any other issues you wanted to raise, though?

MR RUSSELL: No, I think that was it.

MR KEMP: No, we appreciate the opportunity to have another chat.

PROF SLOAN: Thanks very much. We will see all your friends ACIL and - they've got another group with them, haven't they?

MR KEMP: Thompson Clarke Shipping, yes.

PROF SLOAN: Thank you very much

MR KEMP: If there are any follow-up questions we can get hold of - - -

PROF SLOAN: Thank you. There will be. Is there anyone in the audience who would like to sit up here and give us their tuppeny's worth? No. I therefore declare the hearing closed for today and we'll recommence the hearings on Monday in Melbourne. Thank you very much.

AT 4.03 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 6 DECEMBER 2004

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