

Australian Shipowners Association

Submission to the Productivity Commission

Review of National Competition Policy 2004

Introduction

The brief of the Productivity Commission (PC) is both succinct, and yet comprehensive, to:

- improve the productivity and economic performance of the economy
- reduce unnecessary regulation
- encourage the development of efficient and internationally competitive Australian industries
- facilitate adjustment to structural change
- recognise the interests of the community generally and all those likely to be affected by its proposals
- promote regional employment and development
- have regard to Australia's international commitments and the trade policies of other countries, and
- ensure Australian industry develops in ecologically sustainable ways.

The scope, therefore, of the current and further review of national competition policy under these guiding principles strikes a timely chord in the seagoing sector of the Australian maritime industry, where the PC has been charged to report on:

- The impact of National Competition Policy (NCP) and related reforms undertaken to date, its impact on significant economic indicators and contribution to achieving other policy goals,
- The areas offering opportunity for significant gains to the economy from removing impediments to efficiency and enhancing competition,

Competition policy, its contribution to other policy goals and existing opportunities for gain define the focus of the *Independent Review of Australian Shipping – A Blueprint for Australian Shipping* (IRAS) where former Federal Transport Ministers, The Hon John Sharp and The Hon Peter Morris identify the initiative of “industry to identify options to build on the industry's strengths, to propose adjustments so that the industry can grow, and to point to external factors that inhibit the industry's prosperity.”¹

¹ *Independent Review of Australian Shipping – A Blueprint for Australian Shipping* Hon. P. Morris & Hon J. Sharp, (ASA, September 2003) at p.1

Background

The concept of IRAS developed from the acceptance by the Australian shipping industry that circumstances had combined to create an opportunity for all the issues that affect the future conduct of the Australian shipping industry to be considered and discussed.

As outlined in the IRAS Report, “the shipping industry in Australia has been viewed—and has viewed itself—as peculiarly Australian in an industry that internationally is highly globalised. It is an industry that has taken very substantial strides, within the limits of being an Australian employer, to eradicate inefficiencies that inhibit its competitiveness.

The strides taken in the past have been implemented in a context of retaining the core functions—ownership, management, control and crewing of ships—as Australian activities, resulting in the generation of export income for the nation.

On the other hand, its customers demand access to competitive shipping services. One of the purposes of IRAS therefore was to identify where Australian practices need to be brought into line with international shipping practices.

International shipping and coastal shipping operate in the same industry, but for Australian policy purposes can be viewed separately.

Australian participation in international shipping services.

In international shipping there is a global market in which quality operators’ costs are reasonably comparable. Capital, insurance, fuel, maintenance and crewing are all costs for which there are global markets accessible to all operators.

In order to access providers in those global markets, Australian ship operators need to be unencumbered by constraints that inhibit their ability to conduct their businesses in a way that reflects best, internationally competitive, ship operation practices.

The constraints on Australian operators include:

- inability to choose the ship-registry regime of their choice because of the operation of the *Shipping Registration Act 1981*;
- inability to recruit and employ Australian officers at internationally competitive terms in accordance with international employment practices because of the operation of the *Income Tax Assessment Act 1936*, which treats Australian resident taxpayers who are international seafarers differently to other Australians who derive their income overseas.
- a negative attitude to participation by Australians in shipping which is characterised by the long-held sectoral view that Australia is a ‘shipper² not a shipping nation’.³

² ‘shipper’ is the term used to describe the the party that as a commercial interest in the cargo – not to be confused with shipowner, who is the carrier.

Pretext for National Competition Policy

In considering the great productivity leaps forward that have been made in the Australian economy since the late 1980s, the draft report of the PC rightly notes:

“While external developments contributed to this deteriorating performance, high trade barriers and various regulatory and institutional restrictions on competition in the domestic market sustained significant inefficiencies across the economy. They also created a business culture that focussed on securing government preferment rather than on achieving a competitive edge through cost control, innovation and responsiveness to customer needs.

In recognition of the policy-related inhibitors on growth, from the early 1980s, Australian governments embarked on a broad-ranging program of economic reform. The decade that followed saw the liberalisation of capital market controls, the abolition of import quotas and phased reductions in tariff assistance. The heightened competitive pressure in turn prompted the introduction of greater flexibility to Australia’s previously rigid and highly centralised labour market arrangements, and various institutional and regulatory reforms to promote more efficient delivery of infrastructure services.

As the reform program gathered pace, however, it became apparent that aspects of Australia’s wider competition policy framework were impeding performance across the economy and constraining the scope to create national markets for infrastructure and other services.”⁴

Competition infrastructure

These are concerns that continue to be felt in the Australian commercial (maritime) trading fleet. In recent years the industry has undergone a wealth of reform and cultural change. It may best be characterised today, not as a distinct ring-fenced industry warranting specific and unique controls and protections, but rather as a niche sector of a much broader international industry.

This has flow-on consequences which touch upon the key cost elements that underlay the prevailing cost structure of Australian shipping – choice of flag, manning, access to finance etc.

Perceived as a sector of an increasingly competitive international industry there remain 2 primary institutional and regulatory themes that appear:

1. A series of legislative impediments that distinguish Australian operators (only) and inhibit competition by preventing Australian operators in this market from achieving a competitive edge through cost control, innovation and responsiveness to customer needs.

³ ibid

⁴ Productivity Commission 2004, *Review of National Competition Policy Reforms*, Discussion Draft, Canberra, October p.XIII

2. The facilitated presence of foreign competition domestically in Australia's intermodal transport industry. The maritime industry is set apart from virtually every other sector in that it must compete within Australia's domestic and regulatory confines, with foreign competition operating in Australia under vastly different fiscal, labour and cost structures.

In many respects, these questions turn on the public interest test considered by the Productivity Commission in its Discussion Draft.

A series of legislative impediments

The IRAS Report noted that the prevailing view of Australia's ship owners and operators is that "the future for Australian shipping is to be found by focussing on niche markets, where quality, professional skills and reliability are called for. In these markets Australia has the potential to compete effectively. To do so, [however] the impediments that make it uncompetitive must be removed. The removal of these impediments should not lead to the exploitation of Australian workers, but result in securing the future of Australians engaged in the maritime sector.

Issues put to the [IRAS] Review as needing resolution are:

- the difference between Australian crew costs and those of quality foreign crews;
- the impact of higher on-costs involved in employing Australians, such as seafarers' compensation and leave arrangements;
- a lack of manning flexibility;
- the lack of a competitive tax system for Australian seafarers working in international trades, and
- confusion and inconsistency in the application of the regulation of shipping under Australian law.

Addressing these issues will help overcome the AUD 2 to 2.5 million per vessel per year cost difference between Australian vessels and comparable foreign crewed vessels."⁵

10 Australian Acts impeding competition

Key to resolving much of the competitive divide that exists between Australian operators and their competitors are regulatory and structural anomalies in a series of (at least) 10 pieces of legislation.

1. ***Navigation Act 1912*** - A vessel entering Australia is for practical purposes captured under the Navigation Act 1912. A vessel introduced by an Australian entity to operate permanently on voyages around the Australian coast would be provided with a licence under Part VI of the Navigation Act.

By contrast, a vessel chartered-in to undertake a one-off or occasional voyage carrying domestic cargo would seek and likely be provided with

⁵ *Independent Review of Australian Shipping*, op cit, at p.17

either a Single Voyage Permit (SVP) or a Continuing Voyage Permit (CVP) under Part VI of the Navigation Act. Section 286(2) of the Navigation Act in fact deems that vessels granted permits are not engaged in the 'coasting trade'.⁶ Vessels not engaged in the coasting trade are exempt from a range of consequential legislative provisions under the Navigation Act and elsewhere.

2. **Customs Act 1901** - A ship entering Australia to carry domestic cargo will have obtained either a Licence or an SVP or a CVP under Part VI of the Navigation Act. The question then is whether the vessel becomes imported under the Customs Act.

The Australian Customs Service has advised that:

“The key issue of whether a ship should be imported largely rests on the issue of whether the international voyage which brought the ship to Australia in the first place has ceased either permanently or temporarily. International voyage is not defined in the Act nor is importation....The Customs process therefore focuses on the particular circumstances of the ship in question.....*A major consideration is the DOTARS permit because that is evidence of compliance with the Government's policy on cabotage.*”⁷

The practical result is that a ship that is operating with a Licence will be imported under the Customs Act and a ship that is provided with an SVP or a CVP will not be imported under the Customs Act.

A ship that is imported under the Customs Act is deemed to be an Australian ship and is covered by Part II of the Navigation Act. A ship that is covered by Part II of the Navigation Act is then covered by the Seafarers' Rehabilitation and Compensation Act 1992 and the Occupational Health and Safety (Maritime Industry) Act 1993 etc (both see below).

A ship that is not imported is neither covered by Part II of the Navigation Act nor subject to these other items of legislation.

⁶ The 'coasting trade' is defined in section 7 of the Navigation Act to mean (**my emphasis**):

(1) **A ship shall be deemed to be engaged in the coasting trade**, within the meaning of this Act, **if it takes on board passengers or cargo at any port in a State, or a Territory, to be carried to, and landed or delivered at, any other port in the same State or Territory or in any other State or other such Territory:**

Provided that **a ship shall not be deemed to be engaged in the coasting trade by reason of the fact that it carries:**

(a) passengers who hold through tickets to or from a port beyond Australia and the Territories; or

(b) **cargo consigned on a through bill of lading to or from a port beyond Australia and those Territories and which is not transhipped to or from any ship trading exclusively in Australian waters which is not licensed under this Act;** or

(c) mails between any ports in Australia or in any of those Territories; or

(d) as a passenger:

(i) the owner of the ship or a person who is a servant, or a member of the family, of the owner of the ship; or

(ii) a pilot who is proceeding from his or her home station for the purpose of meeting a ship requiring the pilot's services or is returning to his or her home station after piloting a ship:

Provided further that the Governor-General may by order declare that the carrying of passengers or cargo between ports in any Territory, or between ports in any such Territory and any other Australian ports, or ports in any other such Territory shall not be deemed engaging in the coasting trade.

(2) In this section, *owner*, in relation to a ship, includes a person who is the manager or secretary of a body corporate which is the owner of the ship.

⁷ Correspondence with Australian Shipowners Association 2002 – emphasis added

3. ***Migration Act 1958*** - The crew members of a foreign ship entering Australia are taken to hold a Special Purpose Visa (SPV) under the Migration Act. Crew members taken to hold a SPV may remain in Australia for up to three months and may have visas renewed for further three month periods provided that their ship leaves Australia at least once every three months.

Foreign crew members working on Australian ships are required to satisfy considerably more onerous migration requirements.

4. ***Workplace Relations Act 1996*** - Due to the combined effects of the Customs Act, the Migration Act and the Navigation Act, an operator of a ship trading continuously on the Australian coast must employ Australian labour. Australian labour is employed subject to the conditions of the Workplace Relations Act.

Enterprise bargains negotiated within the terms of the Workplace Relations Act necessarily have regard to Australian standards of living, pay and conditions and give rise to labour costs substantially in excess of the cost of labour agreements applicable to ships in which foreign labour is engaged (often representing and reflective of the standards of living of a crew member's nationality).

The Workplace Relations Act provides the framework within which pay and conditions are negotiated between employers and Australian workers, and is applicable to ships in which Australians are employed. Ships trading in Australia under permits in which foreign labour can be employed are not subject to the terms of the Workplace Relations Act.

5. ***Seafarers' Rehabilitation and Compensation Act 1992*** - The vessels to which the Seafarers' Rehabilitation and Compensation Act (the 'Seafarers Act') applies are those covered by Part II of the Navigation Act.⁸

The provisions of the Seafarers Act create liabilities for employers such that Protection and Indemnity Clubs ('P&I Clubs'), the regular insurers servicing ship operators world-wide for crew and cargo insurance cover, will not provide cover for employers whose employees are subject to the Seafarers Act. Premiums are therefore higher for Australian operators.

Crews of vessels trading in Australia but which are not imported and thus not deemed to be Australian ships under Part II of the Navigation Act (and thus not falling within the application of the Seafarers Act) are covered by P&I insurance which is available at less expensive premiums than those applied by the Australian general insurance industry to employers of crews in ships covered by the Seafarers Act.

6. ***Occupational Health and Safety (Maritime Industry) Act 1993*** - Vessels to which the Occupational Health and Safety (Maritime Industry) Act 1993 (the 'OH&S (MI) Act') applies are those covered by Part II of the Navigation

⁸ Refer to assessment of the *Customs Act* earlier

Act. A vessel which is imported under the Customs Act is deemed to be an Australian vessel for the purposes of Part II of the Navigation Act and consequently becomes subject to the provisions of the OH&S (MI) Act.

Internationally, the shipping industry is subject to the International Safety Management Code (the ISM Code) which was promulgated by the International Maritime Organisation (IMO) and prescribes, amongst other things, auditable standards of crew health and safety. These ISM Code standards are accepted internationally as appropriate and adequate minimum standards.

Crews of vessels covered by the OH&S (MI) Act must have standards applied which are in excess of those required by the ISM Code.

Crews of vessels trading in Australia but which are not imported and thus not deemed to be Australian ships under Part II of the Navigation Act and thus not falling within the application of the OH&S (MI) Act are covered by the ISM Code which applies less onerous and prescriptive requirements than those applicable to employers of crews in ships covered by the OH&S (MI) Act.

7. **Customs Tariff Act 1995** - Item 42 of Schedule 4 to the Customs Tariff Act provides duty-free entry into Australia for goods described as parts of vessels and materials for use in the modification and repair of vessels. There are certain items used in vessels, both internationally and in Australia, which are deemed by the Australian Customs Service not to be parts or materials for use in the modification and repair of vessels.

The charges levied on imported items include duty and GST on freight and insurance as well as a fee for customs entry. In the case of a mooring line, for example, an item unavailable in Australia and thus necessarily imported, an Australian operator importing such an item is paying a premium imposed by the Customs Tariff Act which the operator of a foreign ship trading under a permit in Australia's coastal trade does not have to pay because the mooring line will be 're-exported' with the ship.

8. **Shipping Registration Act 1981** - Section 12 of the Shipping Registration Act prescribes that a vessel owned by an Australian entity shall be entered in the Australian register of ships. Since most ships operating continuously in coastal trades (and therefore imported, licensed and subject to Part II of the Navigation Act) are owned by Australian entities such ships are necessarily registered in Australia.

Foreign-owned ships operating in Australia under permits under the Navigation Act are not imported, are not deemed to be Australian ships and maintain their foreign registry.

The benefits conferred by foreign registry arise from fiscal and tax relief measures made available by many foreign nationalities of registry. The

disbenefit attributable to mandatory Australian registry is that Australian registration confers no fiscal or tax benefit whatever.⁹

It is worth noting that tax and fiscal concessions are commonplace in the shipping world (since 1996), except for Australia. The following table illustrates the preponderance of measures made available to shipowners in European countries.

The measures made available involve legislative facilitation of low-cost manning arrangements, legislated concessions dealing with taxes payable by or on behalf of seafarers, corporate tax concessions made available by the provision of what is known as a 'tonnage tax', tax-free treatment on capital reserves created for and applied to investment in shipping and other measures.

As noted by the PC, it is preferable to eliminate the effects of "assistance related arrangements that may impede efficient competition and that therefore warrant policy attention."¹⁰

More than 50% of world shipping now operates under what are known as 'Open Registries'. Otherwise known as 'flags of convenience', such registries offer a wide range of fiscal incentives. Many OECD countries have chosen to offer comparable incentives in order to lure their shipping activity back under domestic flags.

ASA has indicated, and the Government has, not surprisingly, agreed that fiscal assistance is not appropriate at this time in Australia.

The following table is from a Report of the Institute of Shipping Analysis in Sweden¹¹:

Table: State Aid Measures Provided to Maritime Transport: European Union, February, 2003

Country	Manning	Seafarers' taxes	Tonnage tax	Reserves	Other
Belgium	X	X	X*	X	X
Denmark	X	X	X	X	X
Finland		X	X		X
France	X	X	X*	X	X
Germany	X	X	X	X	X
Greece	X	X	X		
Ireland			X		X
Italy	X	X	X*	X	
Luxembourg	X	X		X	X

⁹ See Appendix 1 regarding the competitive advantages enjoyed in the coasting trade

¹⁰ Productivity Commission 2004, op cit, p.221

¹¹ The Implementation of State Aid Guidelines in Different European Countries The Institute of Shipping Analysis Sweden February 2003

Netherlands	X	X	X	X	X
Norway	X	X	X	X	
Portugal		X		X	X
Spain		X	X	X	X
Sweden	X	X			
UK	X		X	X	

*Measures not then notified to the European Commission

Source: The Implementation of State Aid Guidelines in Different European Countries The Institute of Shipping Analysis Sweden February 2003 page 3

It is illustrative to consider the flag nationality of the vessels granted CVP's between December 2002 and December 2004. Of approximately 265 CVP's issued over this period, the vast majority have been issued to vessels registered in Hong Kong (82 permits), Bahamas (49), Liberia (33), Malaysia (21) and Cyprus (17). These major flags are followed by Singapore (11), Germany (11), Panama (10), Virgin Islands (9) and Tonga (6).

Of these 10 nations, 7 are regarded as Open Registries and provide what amount to subsidies of one kind or another.

In this regard, it should also be observed that section 287 Navigation Act outlines the strict liability offence that:

- “(1) The master, owner and agent of a ship commit an offence if:
- (a) any one or more of the master, owner and agent engage in conduct; and
 - (b) the ship:
 - (i) is receiving, directly or indirectly, any subsidy or bonus from the Government of a country other than Australia; or
 - (ii) is to receive such a subsidy or bonus under an arrangement; or
 - (iii) has received such a subsidy or bonus in the 12 months immediately preceding the conduct; and
 - (c) the conduct results in the ship engaging in the coasting trade.”

Vessels operating under CVP are deemed not to be operating in the coasting trade.

9. **Income Tax Assessment Act 1936** - Australian resident taxpayers who are engaged overseas as seafarers in ships trading internationally (and which trade as part of such voyages in Australia's coastal trades) do not qualify for concessional tax treatment under Section 23AG of the Income Tax Assessment Act. This is frequently at odds with the experience of foreign seafarers employed in Australian domestic trades.

Through a legislative anomaly of language introduced to this provision in the 1980s, Australian seafarers deriving income in foreign service can no longer

qualify for the relevant tax treatment compared to other Australians deriving income in foreign service ashore.

The consequence for an employer is a higher gross employment cost for Australian seafarers engaged on vessels in international trades.

10. **Product Stewardship (Oil) Act 2000** - The Product Stewardship (Oil) Act imposes a levy on the cost of lubricating oils purchased in Australia. The purpose of the levy is to encourage recycling of waste oil. In the case of the lubrication oils used in ships, the lubrication oils are almost entirely consumed, leaving little if any waste to be discharged ashore. The waste-oil recycler who then sells-on recycled oils is paid a grant for recycling of waste oils which market forces are presumed will be passed on at least in part to the party generating the waste oil.

In shipping, there is virtually no waste oil generated. Accordingly, an Australian ship operator pays the levy but is unable to recoup the additional cost through access to the recycler's grant.

Foreign ship operators present in the Australian interstate and intrastate transport industry avoid this cost by purchasing lubricating oils at a foreign port.

Consideration of anti-competitive legislation

With respect to consideration of potential anti-competitive legislation, ASA supports the approach of the PC to ensure that legislation (either existing or proposed) should not restrict competition unless it can be demonstrated that:

- Benefits of the restriction to the community as a whole outweigh the costs
- The objectives of the legislation can only be achieved by restricting competition, and
- Ensures an environment of competitive neutrality, consistent with the ongoing arrangements established under the NCP.

ASA submits that the underlying competitive impediments outlined above effectively restrict competition in the Australian sector of the international sea transport market. Whilst there are claimed benefits to a range of shippers of ready access to the cheaper freight rates offered by foreign carriers, the cost of this preference is not so readily acknowledged.

The IRAS Report confirmed that the net annual shipping services deficit for 2001/02 remained high at a deficit of \$2.9 billion. This refers to the payment of freight charges to foreign carriers based on the current heavy reliance on such carriers. By contrast, the annual contribution from Australian shipping to net services increased from \$161 million in 2000/01 to \$180 million in 2001/02.¹² The contribution from foreign shipping to Australia's current account deficit was 13.9% in that year.

¹² *Independent Review of Australian Shipping*, op cit p.22

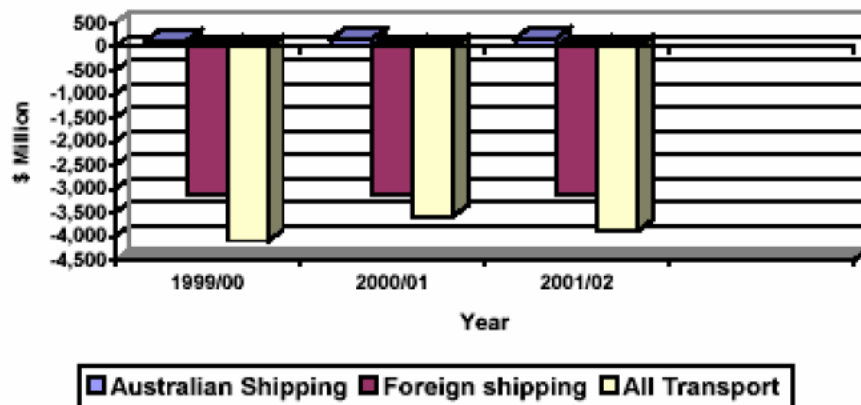


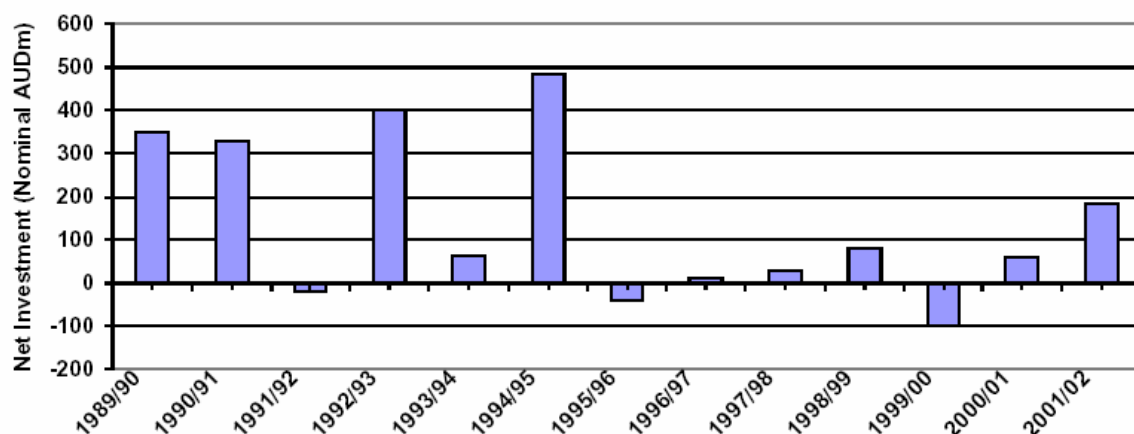
Figure: Contribution of Australian and foreign shipping to net services

Source: Independent Review of Australian Shipping 2003 p.23

Adherence to the belief that Australia as a shipper nation, and Australia as a shipping nation are somehow mutually exclusive concepts commits the Australian economy to the handicap of a AUD 3 billion deficit through a commitment to foreign shipping rather than internationally competitive Australian-controlled shipping earning export income.

Impact on Australian investment

The uncertainty that has arisen from the factors underlying the competitive divide between Australian licensed vessels operating in the coasting trade and foreign 'permit vessels' operating in the same trades has seen a significant reduction in



investment in shipping in Australia since 1995.

Figure: Net Investment in Australian Shipping (Real) 1989/90 – 2001/02¹³

Public interest test to apply to maritime legislation

The PC rightly observes that the guiding principle under the National Competition Policy is that competition will generally enhance community welfare by encouraging

¹³ Australian Maritime Transport 2003, (ASA May 2004) p21

greater efficiency. This is (in part) confirmed with the 2000 CoAG directive to enhance the public interest test by requiring governments to consider reform impacts on particular industry sectors and community groups.¹⁴

Sea Transport Efficiency and Greenhouse Gas Emissions

Climate Change and Greenhouse Gas Emissions

Although the likely impacts and severity is still often debated, the inevitability of global warming and climate change is generally accepted. As such, the stabilisation and reduction of anthropogenic greenhouse gas emissions is one of the most pressing current environmental challenges.

It is a goal of the PC to ensure that “ensure Australian industry develops in ecologically sustainable ways”. The transport sector, which includes passenger cars, domestic aviation, domestic navigation (shipping), rail and other road transport (freight), is responsible for generating 14 percent (or 79 Mt) of Australia’s CO₂ emissions¹⁵. Transport is the third highest emitter of greenhouse gases behind stationary energy (47.6%) and agriculture (19.2%).

Division of Domestic Freight Task Emissions Contributions

Australia’s domestic freight task is divided between shipping, road and rail. The non-urban domestic freight task is relatively evenly spread between these three modes.

Shipping supports 29.1 percent of the domestic freight task (Figure 1), consumes 9.6 percent of the total energy used in freight transportation¹⁶ but contributes to just 2 percent of the total emissions from the transport sector (Figure 2).

¹ **Figure 1:** Percent share of domestic, non-urban freight task measured in tonne-kilometres.

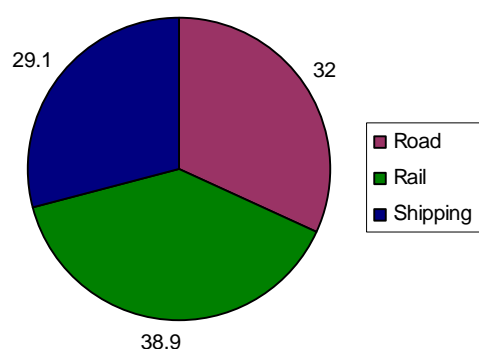
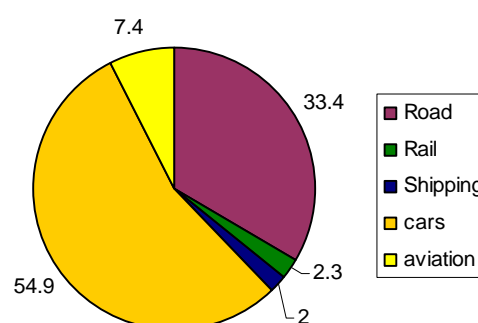


Figure 2 Percent CO₂ emissions in 2002 from Transport by mode.

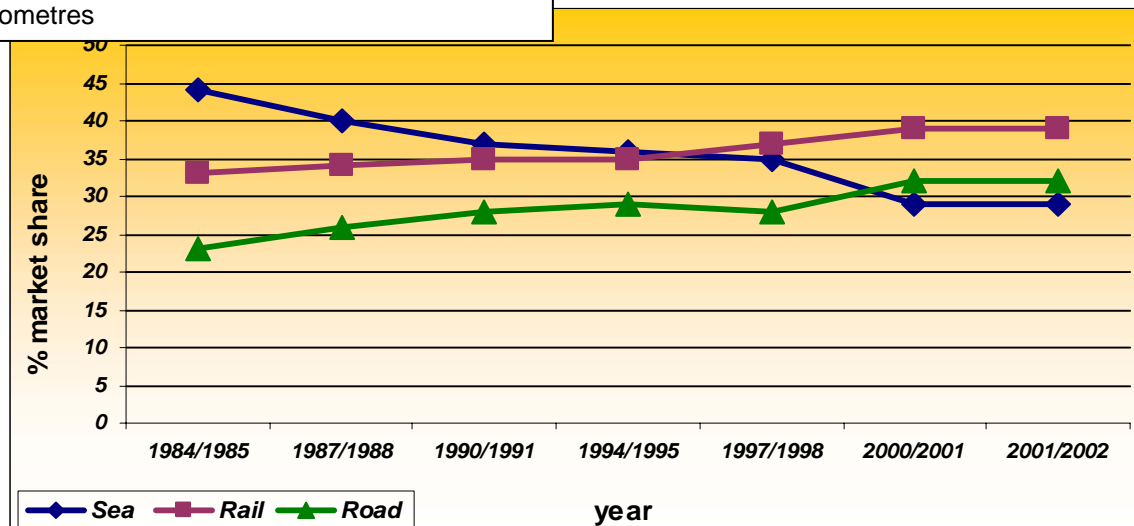


¹⁴ Productivity Commission 2004, op cit, p.17

¹⁵ “Total CO₂ emissions” includes total emissions of other greenhouse gases such as methane, nitrous oxide and perfluorocarbons. In calculating and expressing total greenhouse emissions, these other greenhouse gases are converted to CO₂ equivalent amounts.

Despite being widely considered to be the most energy efficient transport mode for long distance haulage of large volumes of freight, the share of the domestic freight task (in tonne-kilometres) attributed to shipping has declined from 44 percent in 1984/85 to the current figure of 29.1 percent in 2001/02¹⁸.

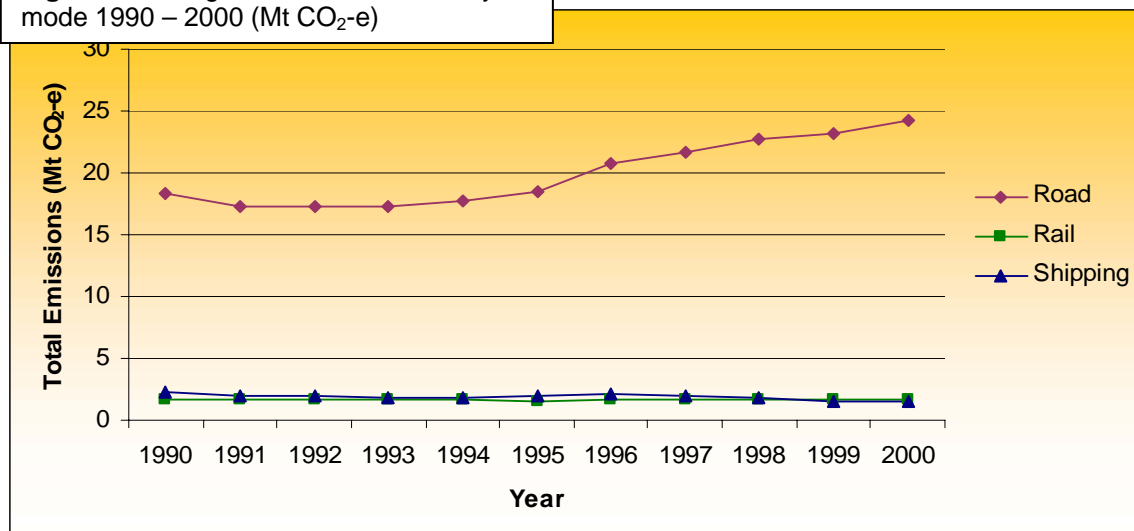
Figure 3: Market shares in the movement of no-urban domestic freight over time in tonne-kilometres



19

While the market share of the domestic freight task currently designated to shipping has declined, road and rail has increased.

Figure 4: Changes in total emissions by mode 1990 – 2000 (Mt CO₂-e)



20

¹⁶ 'Australian Maritime Transport 2003', Apelbaum Consulting Group, 2004.

¹⁷ National Greenhouse Gas Inventory 2002, Australian Greenhouse Office.

¹⁸ 'Australian Maritime Transport 2003', Apelbaum Consulting Group, 2004.

¹⁹ 'Australian Maritime Transport 2003', Apelbaum Consulting Group, 2004.

Further, Australian shipping has managed an annual emission reduction of 0.8 Mt CO₂-e, from 2.3 Mt CO₂-e in 1990 to 1.5 Mt CO₂-e measured in 2000. While increasing in total market share, the total yearly emissions from rail have remained constant during that time while emissions from road transport have steadily increased from 18.3 Mt CO₂-e in 1990, to 24.3 Mt CO₂-e in 2000.

Government Policy

The current Australian Government's white paper on energy reform entitled 'Securing Australia's Energy Future' discusses the application of significant public funds to encourage research into low-emission energy generation technologies to achieve of long-term emission reductions.

A glaring inconsistency on greenhouse policy becomes apparent when considering the current focus on 'low-emission technology' policy in energy generation is absent when it comes to transport. In fact, as demonstrated in figures 3 and 4, in relation to meeting the domestic freight task the trend shows a general movement away from more energy efficient, low emission transport modes to high emission and less efficient modes.

Further, the Government's own Australian Greenhouse Office²¹, suggests modal switching as an important measure to reduce greenhouse gas emissions. In discussing modal switching the Australian Greenhouse Office highlights sea freight as being the least emission intensive freight mode, followed by rail and then road. The consistent growth in the market share of road transport in particular, as the most resource and emission intensive transport mode, appears in conflict with emission reduction commitments. The Greenhouse Office suggests that shifting freight back along this hierarchy, so as to reverse the pattern evident in Figure 3, would assist in reducing emissions.

Given the differences in efficiency between road and sea freight, even a ten percent modal shift would have a positive impact in reducing Australia's contribution to greenhouse gas emissions.

Presence of foreign competition domestically in intermodal transport

As noted above, the facilitated presence of foreign competition domestically in Australia's intermodal transport industry creates a unique environment for Australian ship owners and operators seeking to compete in the Australian domestic shipping market. The maritime industry is set apart from virtually every other sector in that it must compete within Australia's domestic and regulatory confines, with foreign competition also operating in Australia, but under vastly different fiscal, labour and cost structures as a consequence of s.287 *Navigation Act 1912*.

²⁰ 'Transport Sector Greenhouse Gas Emissions Projections 2003', Australian Government Interdepartmental Greenhouse Projections Group, Australian Greenhouse Office.

²¹ The Australian Greenhouse Office, although independent at inception, is now part of the Department of Environment and Heritage and is responsible for delivering the projects as part of the Government's \$1.8 billion climate change strategy.

By comparison to other modes of transport within the intermodal logistics chain, shipping is the only mode required to directly compete for domestic cargoes with operators on significantly lower, foreign cost structures.

The PC proudly notes the progress that has been achieved in the road transport sector, which had historically “operated within a diffuse and inefficient regulatory framework which imposed considerable costs on road users.”²²

Similar achievements have been well documented following the recent reforms in the rail sector.

ASA notes the unique opportunity that is now presented to adopt a truly intermodal approach to competition policy in the Australian domestic and international freight sector. The Hon John Anderson, Minister for Transport & Regional Services outlined in the Second Reading Speech for the *Auslink (National Land Transport) Bill 2004* that “the arrangements set out in this Bill signal a move away from the longstanding fragmented approach to land transport investment based on the needs of single transport modes and single jurisdictions.

The Bill will assist a change of investment focus to nationally important transport corridors and to finding the best solutions to transport requirements irrespective of transport mode. ... [and through this Bill] recognise the critical importance of links to our ports and airports in supporting a globally competitive transport system”.²³

This is encouraging to ship owners and operators around Australia and outlines an opportunity that may be reinforced through this national competition review.

The significant presence of foreign competition within Australia’s domestic and regulatory confines compounds the impact of the 10 Acts noted above. As noted by the PC, in cases where licensed ships cannot meet all coastal shipping demands, the Minister can issue single or continuous (lasting up to 3 months) voyage permits, which allow foreign ships to operate without having to satisfy cabotage requirements.²⁴ However, were domestic ship owners and operators not subject to the competitive impediments outlined above, it is certain that there would be fewer circumstances where coastal shipping demands could not be met, especially in niche markets as outlined in the *IRAS Report*.

Having largely addressed the major concerns in the road and rail sectors, though significant reform and infrastructure funding arrangements (AusLink), the owners and operators of Australian ships see a unique opportunity for a renewed focus on achieving modal neutrality – “finding the best solutions to transport requirements irrespective of transport mode”.²⁵

²² Productivity Commission 2004, op cit, p.25

²³ Second Reading Speech, *Auslink (National Land Transport) Bill 2004*, Hon John Anderson, MP, 9 December 2004

²⁴ Productivity Commission 2004, op cit, p.201

²⁵ Second Reading Speech, *Auslink (National Land Transport) Bill 2004*, op cit.

This opportunity may be built upon through an increased awareness of the competitive impediments present in the maritime sector through a heightened presence at the Australian Logistics Council supported through a consideration of the anti-competitive structural elements of the maritime regulatory regime noted above.

Conclusion

ASA submits that 2 primary institutional and regulatory themes ought to be addressed in this review of national competition policy:
























- A series of legislative impediments distinguishes Australian operators (only) and inhibits competition by generally, if not universally preventing Australian operators in this market from achieving a competitive edge through cost control, innovation and responsiveness to customer needs.
- The facilitated domestic presence of foreign competition in Australia's intermodal transport industry. The maritime industry is set apart from virtually every other sector in that it must compete within Australia's domestic and regulatory confines, with foreign competition operating in Australia under vastly different fiscal, labour and cost structures.

Ten interlinked pieces of legislation combine in Australia, having the following effects:

- reducing the productivity and economic performance of the economy, especially with respect to Australia's current account performance
- providing unnecessary regulation
- encouraging the development of an Australian maritime sector that manages in niche markets to efficient and internationally competitive, despite its regulation
- ensuring Australian industry develops in ecologically sustainable ways.

Appendix 1

Summary of competitive advantages enjoyed in the Australian coasting trade

 = competitive advantage  = competitive disadvantage	Foreign Owner	Australian Owner
1. Shipping Registration Act 1981 applicable? (if yes, obliged to register in Australia)	 NO	 YES
2. Can registration be chosen to optimise fiscal/tax arrangements?	 YES	 NO
3. Navigation Act 1912 – Permit or licence under Part VI – Coasting trade provisions	PERMIT	LICENCE
4. Customs Act 1901 – Ship imported because not deemed to be on international voyage?	 NO	 YES
5. Migration Act 1958 – Special Purpose Visas available to foreign crew?	 YES	 NO
6. Obligated to employ Australian because Special Purpose Visas not available?	 NO	 YES
7. Workplace Relations Act 1996 applicable?	 YES	 YES
8. Australian EBAs applicable?	 NO	 YES
9. Does Part II Navigation Act apply because ship is Australian-manned or licenced?	 NO	 YES
10. Does Seafarers' Rehabilitation & Compensation Act 1992 apply (due to coverage under Part II Navigation Act 1912)?	 NO	 YES
11. P&I Insurance for crew claims available?	 YES	 NO
12. Does Occupational Health & Safety (Maritime Industry) Act 1993 apply (due to coverage under Part II Navigation Act 1912)?	 NO	YES

