

Part X inadequate

The ACCC has long believed Part X of the Trade Practices Act dealing with international liner cargo shipping is inadequate, allowing shipping lines to form cartels, through agreements registered under Part X, with little scrutiny. These agreements allow parties to discuss and exchange information on matters of interest, such as freight rates. However, the shipping agreements protected by Part X enjoy a special exemption that other industries can only obtain from the ACCC if it can be shown there is a net public benefit.

These shortcomings were noted recently during an investigation of whether to recommend deregistration of a shipping agreement.

The ACCC found that on the basis of the available evidence and the minimal requirements of Part X of the Act, there were insufficient grounds under the Minister's terms of reference to recommend deregistration of the agreement.

Exporters had been complaining about excessive and rapid rate rises being imposed by the shipping lines operating under the Australian/South East Asia Trade Facilitation Agreement, and in March 2000 the Minister for Transport and Regional Services, Mr John Anderson, directed the ACCC to investigate. This agreement includes most of the shipping trade on the South East Asia route.

In view of that, the ACCC was asked to assess if the services of the lines were economic and efficient and of an adequate standard. These terms

have not been defined in the legislation and while the ACCC has its own definitions, in such an investigation the concepts must be translated into meaningful quantitative indicators.

The ACCC encountered difficulties in getting adequate data from Liner Shipping Services. In testing the LSS data against that available from other sources the ACCC was forced to question the veracity of data related to freight capacity.

The evidence available to the ACCC suggested that the costs of the shipping lines operating under the agreement are not excessive.

In fact, according to information given to the ACCC, these lines incurred losses on the northbound South East Asian trade in the nine months to March 2000.

After freight rates had been at an historic low in 1999, the conference agreed on a rate restoration program. The ACCC was concerned about the speed and size of the program, but in reaching its final decision it did give some weight to the fact that the actual rates are presently below the minimum benchmark agreed in January 2000 and that further rises were not applied as had been announced. Had additional rises been implemented the ACCC may have reached a different decision.

Parliament has recently passed some amendments to Part X that will give the ACCC greater powers in initiating investigations in exceptional circumstances.

Are enough specialists being trained?

The Royal Australasian College of Surgeons has applied for ACCC authorisation of its processes to determine the number of trainees for all specialties in which it conducts training, and the process by which the qualifications of overseas-trained doctors are assessed.

This follows a long-running ACCC investigation into allegations that RACS' processes restrict entry to advanced surgical training in breach of the Trade Practices Act.

RACS conducts advanced surgical training in various surgical specialties such as cardiothoracic, general, neurosurgery, orthopaedic, plastic and reconstructive, otolaryngology (head and neck), vascular and urology.

Authorisation will exempt RACS from legal action for anti-competitive conduct that might otherwise be in breach of the law. The ACCC grants such exemptions only when it is satisfied that the detriment of the conduct is outweighed by the resulting public benefit.

The ACCC investigation has concentrated on RACS' role in deciding the number of places in its advanced training program in orthopaedic surgery and how it assesses overseas-trained specialists referred to RACS by the Australian Medical Council.

RACS must show there is a public benefit arising from the conduct sufficient to outweigh any detriment caused by the lessening of competition. RACS intends to provide a full submission in support of its application by March 2001. The ACCC will then test these claims through a transparent process that involves seeking submissions or comments from interested parties. Anyone wishing to register their name and receive relevant material should contact the General Manager, Adjudication Branch, ACCC on (02) 6243 1226.