Chapter 13

MARITIME TRANSPORT IN AUSTRALIA

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- International shipping markets are becoming more competitive, though restrictions on operations remain in some high income economies. Lower income economies are more likely to have restrictions on foreign investment.
- The Australian experience of a more liberal application of rules on cabotage is associated with lower freight rates and higher productivity in the remaining domestic fleet.
- Becoming more important are the terms of access to port services and their performance.

13.1 INTRODUCTION

This paper is an analysis of the Australian maritime transport sector and addresses maritime transport in the widest sense, while focusing strictly on shipping (international and domestic) and on port infrastructures and related services.

The Australian regulatory framework is, overall, one of the most open and liberal in the world. This analysis examines the sectors that have been reformed in the last few years, those where reforms are still being debated and others where regulatory reform is still obviously necessary for reasons such as poor performance, congestion and bottlenecks. It explains the drivers of past and potential reforms, highlights the consequences of these reforms and provides recommendations, as appropriate, to show room for progress.

More particularly, it focuses on three themes: coastal shipping, competition rules in liner shipping, and cargo handling and related infrastructures. In the first, it explains in what way the Australian coastal shipping regulation is very liberal in comparison with other economies, in the second, why the exemption of carrier agreements from competition law is a non-issue in Australia and in the third why, despite there being no restrictions in the cargo handling sector, some problems remain.

Although geography makes maritime transport of crucial importance for Australia, at first sight this does not show up from data on worldwide maritime transport. The Australian flag registered fleet represents just a tiny share of the world fleet – 0.18% (UNCTAD 2009). Moreover, in 2008 Australia's merchandise trade represented only 1.2% of world merchandise trade in value (UNCTAD 2009). By volume, however, the picture is quite

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different. Despite Australia being a modest trader of general and containerised cargoes, it is a huge exporter of bulk cargoes. Indeed, in 2004 Australia's seaborne export volume of coal and of iron ore represented one-third of the world's coal and iron ore seaborne trade (ISL 2006). Port traffic shows a similar picture. In 2005 the two leading Australian ports in terms of the volume of cargo handled were Dampier and Port Hedland in Western Australia, ranked between 20th and 30th in world terms. Both ports handle only bulk exports and a single commodity at that – iron ore. On the other side of the continent, Newcastle in New South Wales is the world's largest coal port. In terms of container traffic, however, the busiest Australian port is Melbourne, which in 2008 ranked 56th with 2.11 million 20-foot equivalent container units (TEUs) handled.

13.2 CURRENT REGULATORY FRAMEWORK

This section is divided in two parts: shipping, and port infrastructures and related services. Shipping, port and auxiliary services focus on the restrictions on market access and national treatment (and most particularly on barriers to entry), on discrimination between domestic and foreign providers and on competition rules. Port infrastructure addresses the regulatory regime and the roles and status of the regulators.

Broadly speaking, Australia is one of the most liberal economies in a sector which is relatively open worldwide. Table 13.1 identifies key features of the Australian regulatory framework and compares Australia with its APEC partners.

Table 13.1: Regulatory framework in maritime transport in APEC economies.

	Quotas	Exemption of carrier agreements from competition law	Form of the ownership	% of ownership	Acquisition domestic entity	Cabotage	Cargo Handling	Regulatory authority independent
Australia								
Canada								
Chile								
China								
Hong Kong, China						n.r.		
Indonesia								
Japan								
Korea								
Malaysia								
Mexico								
New Zealand								
Peru								
Philippines								
Russian Federation								
Singapore						n.r.		
Chinese Taipei								
Thailand								
United States								
Vietnam								

Source: World Bank Survey, 2008
Note: Darker shading corresponds to a less restrictive implementation of the measure; n.r. = not relevant.

9.2.1 Shipping

International shipping involves no barriers to entry for domestic providers by way of licensing requirements or restriction on the number of providers. There are also few barriers to entry for foreign providers. In regard to cross-border trade (mode 1), a liner shipping operator providing transport services to or from Australia must be represented in Australia by an Australian resident. In regard to commercial presence (mode 3), international activities carried out in Australia must for reasons of tax and legal liability be conducted by a legally

registered Australian firm. This is a restriction on the form of commercial presence. Although, technically, both measures are considered by the General Agreement of Trade in Services (GATS) to be impediments to trade, their main objectives are not protectionist but fiscal, safety and juridical: they establish practical Australian jurisdiction over maritime incidents in Australian waters and ensure that ships do not leave port without paying their bills. Additionally, there is no discrimination between domestic and foreign providers: no tax exemption, no preferential subsidy, and no discrimination in access to port facilities and related services. The one exception is in liner shipping, with the Bass Strait Freight Equalisation Scheme. According to this program, in order to avoid transport cost disadvantages for Tasmanians, the Australian government subsidises shippers transporting certain types of cargo between Tasmania and mainland Australia.

Australia still maintains an exemption from domestic competition laws on international liner shipping agreements (Box 13.1). However, if the agreement contains any anti-competitive provisions, it must be registered under Part X of the Trade Practices Act in order to qualify for the exemption. Carriers of registered agreements must publish specified details in a public register and the parties to them are also required to negotiate with, and provide information to, representative shipper bodies. In general all types of agreements are liable to be registered.

Box 13.1: A typology of agreements in liner shipping.

Historically, economies exempt liner shipping carriers agreements from the competition rules. The objectives of this measure are to:
- make the service more reliable;
- make the market more stable; and
- take advantage of economies of scale.

Various types of agreements have different aims and different competitive outcomes. These agreements are classified into three categories:

Conferences are route-specific agreements between carriers on conditions for the carriage of cargo. The main characteristics of conferences are the regulation of capacity and the application of uniform or common freight rates. They can be seen as a kind of *entente* between carriers that restrict competition.

Operational agreements provide for cooperation by means of technical, operational or commercial coordination. They take various forms: vessel-sharing agreements, managing port installations and managing marketing activities. They do not affect competition directly and may improve the efficiency of market outcomes.

Discussion agreements are non-binding agreements between conferences or between conference and non-conference members servicing a particular route. They are a forum to discuss and share commercial information relevant to a specific route (e.g., forecasting the introduction of a new capacity)

Source: Productivity Commission 2005.

Table 13.1 shows Australia to be one of the more liberal economies in relation to coastal shipping. The Australian regulatory framework is considered as such because many economies still reserve domestic shipping for vessels flying their own flag. Although these requirements are burdensome, they are restrictions on foreign ownership and on the employment of foreign crews. Australia does not reserve domestic shipping for Australian-flag vessels. The least open case is that of the United States of America (USA): under the well-known Jones Act, it reserves cabotage for vessels built in the USA.

According to the Australian regulatory framework, two systems co-exist in coastal shipping: a general scheme (the licence system) and a special scheme (the permit system) (Australian

Parliament, House of Representatives 2008). To be licensed, carriers must comply with two main requirements. Firstly, the vessel's crew must be paid at Australian wages while it trades on the Australian coast, and secondly, the vessel must not have been subsidised in the previous 12 months. Permits to transport coastal trade are issued without these licence requirements but under certain conditions: if there are no suitable licensed ships available and if the issuing of the permit is considered desirable in the public interest.

13.2.2 Port infrastructure and related services

Under the Australian Constitution, the responsibility for ports and harbours is decentralised, so that regulation is a matter for the states and territories. Port regulators are therefore state government agencies and most of them are not institutionally independent (Annex Table A13.1). At the main container ports the infrastructure (e.g., piers, berths and quays) is publicly owned through the port corporations under a landlord system, whereby private terminal operators lease terminals from the public authority and operate them as private businesses. At bulk-loading ports various schemes apply. For example, at the coal port of Hay Point the infrastructure is owned and operated by a private company, at Gladstone the infrastructure is managed and operated by the publicly owned port corporation, at the coal port of Dalrymple Bay the infrastructure is managed by a private firm under lease from the port authority and the port of Newcastle has both public and private terminals under a state-owned port corporation.

Commercial regulation of port and auxiliary services involves no barriers to entry for either domestic or foreign providers, except in sectors where there are market failures. Indeed, in ports generally, the number of some services providers – cargo handling, storage and warehousing and pilotage – is limited by economies of scale or because of a scarcity of port space. On the one hand, companies seeking to provide cargo handling, storage and warehousing services must obtain concessions from port authorities through auctions or tenders (in the absence of competition in some markets, the port authorities may even introduce competition) while on the other hand, pilotage services are regulated monopolies.

Port services can be defined as activities related solely to the management of ships in port, such as pilotage, berthing, anchorage, whereas auxiliary services are defined as activities related to cargo manipulation in and on ships, such as cargo handling, storage and warehousing and customs clearance.

13.3 FORCES FOR POLICY CHANGE

This section deals with sectors which have been subject to recent policy changes or which face policy and regulatory challenges, with an initial focus on coastal shipping that has undergone various reforms since 2008. For details about recent policy changes see Table A13.2 in the Annex. The section then explains why the exemption of shipping agreements from competition rules can be considered a non-issue, and finally it reveals how inefficient regulatory regimes and poor management of infrastructure has led to problems such as a lack of competition in container handling, and congestion and bottlenecks at bulk port terminals.

13.3.1 Coastal shipping

The core legislation that regulates Australian coastal shipping is the Australian government's Navigation Act 1912. The Act is supported by the Ministerial Guidelines for Granting

Licences and Permits to Engage in Australia's Domestic Shipping (the Ministerial Guidelines) which provide guidance for administering the coastal trade provisions of the Act. Although the Australian coastal shipping legislation has not changed much over several decades, its interpretation and application by the government has changed a good deal.

Until the early 1990s coastal shipping permits were issued to foreign-flag vessels in exceptional circumstances only and the share of coastal trade transported under the permit system was small (Figures 13.1–2).

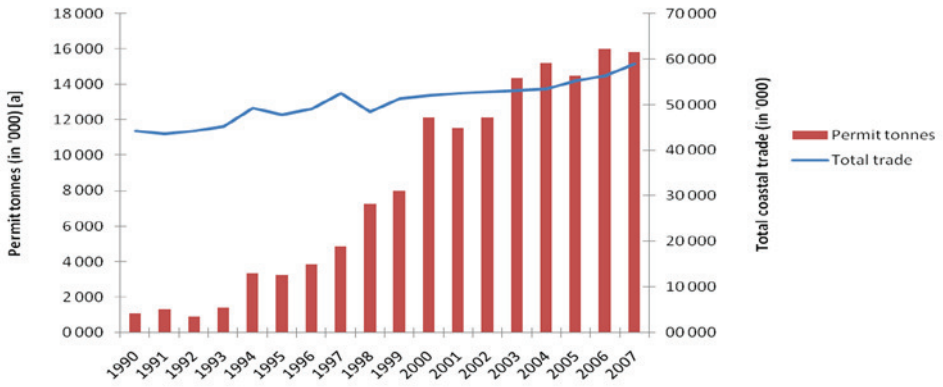


Figure 13.1: Total coastal trade and permit tonnage issued by the government. (Source: Department of Infrastructure, Transport, Regional Development and Local Government [2009])

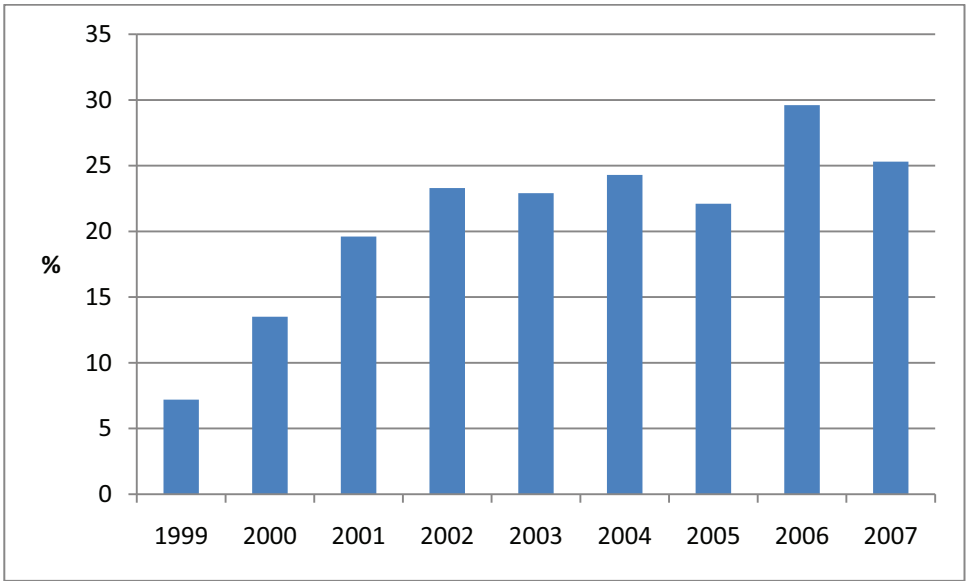
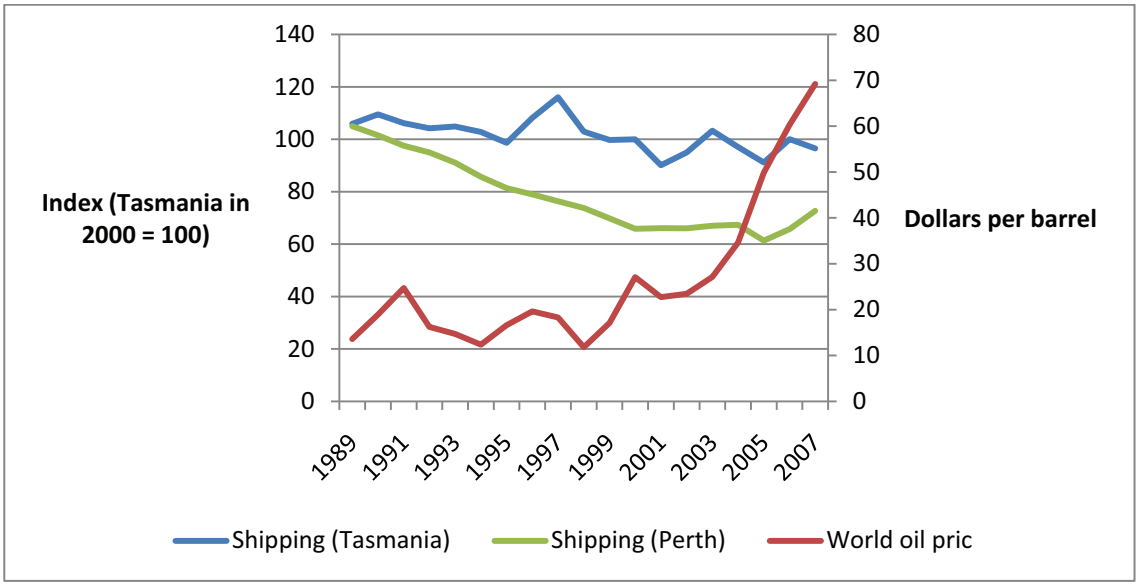


Figure 13.2: Share of coastal trade transported under permits (%). (Source: Department of Infrastructure, Transport, Regional Development and Local Government [2009])

In the early 1990s the small number of permits issued combined with the licensing requirements and high Australian labour costs allowed the Australian-flag vessels to remain competitive. In other words, government policy supported the national fleet. Since the mid 1990s the government's decision to take a more liberal approach was justified as a way of reducing the cost of coastal shipping. Indeed, a parliamentary report on Australian coastal shipping stated that the gap between operating a foreign and an Australian crew ranged from AUD1 million to AUD3 million per year, depending on the size of the vessel (Australian Parliament, House of Representatives 2008).

The relaxation of cabotage in the 1990s had two effects. At first, due to technological factors and the rationalisation of manning scales introduced by the Australian government, it sustained a downward trend that had been observable in real interstate non-bulk freight rates from the early 1980s. The impact of the change in coastal shipping policy was clear from the mid 1990s, however, as the decrease in freight rates for journeys to and from Perth accelerated despite rising fuel prices (Figure 13.3).[2]



Notes: Shipping rates on the left scale (2000–01 = 100) and oil price on the right scale. The basis of the shipping freight rates is full container load (FCL) wharf-to-wharf (that is, excludes local pickup and delivery). Rates for Tasmanian non-bulk shipping are weighted by route. (a) Annual average of weekly all economies spot price fob weighted by estimated export volume, in AUD/barrel.

Figure 13.3: Real interstate non-bulk freight rates and world oil price. (Sources: BITRE 2008, Energy Administration 2010)

The second effect was more obvious. The Australian fleet decreased in deadweight tonnage (dwt; carrying capacity) by almost half between 1999 and 2007, with the much larger decrease in the coastal fleet (Table 13.2). This is a direct effect of the market share loss of Australian-flag vessels in favour of foreign permit vessels (Australian Parliament, House of Representatives 2008). From 1994 the permit tonnage has increased much faster than the total coastal trade. Hence, the share of coastal trade transported under permits increased steeply from around 7% in 1999 to around 25% in 2007 (Figures 13.1–2). However, the decrease of the Australian-flag coastal shipping fleet had been accompanied by an increase in the productivity of the fleet. Indeed, in 1999, the ratio of costal trade transported by the Australian-flag fleet (in tonnes) divided by the capacity of the Australian-flag fleet dedicated to coastal shipping (in dwt) was 27.7; in 2007 the ratio was 66.9 (computed from BTE [2000], BITRE [2009a] and Department of Infrastructure, Transport, Regional Development and Local Government [2009]).

In 2007 a Labor Government replaced the long-serving conservative coalition. The new government held the view that it was in the national interest to maintain a strong Australian fleet, for strategic reasons that included security of trade and to provide a training ground for

[2] There are two reasons for using Perth freight rates as the example. Firstly, the increase in the number of permits did not affect freight rates on the Tasmanian route because of the support of the Australian government through the Bass Straight Freight Equalisation Scheme. Secondly, coastal shipping to and from Perth represents more than 50% of the total interstate coastal shipping activity (in billion tonne kilometres) and the majority of this is transported in permit vessels. The port of Perth is Fremantle.

Table 13.2: Summary of the Australian registered trading fleet, 1999 and 2007.

	Number of vessels		Dwt		
	1999	2007	1999	2007	Change in %
Coastal trade	41	28	1 562 588	644 807	-59
Overseas trade	10	10	673 467	543 808	-19
Total	51	38	2236055	1188615	-47

Source: BTE 2000, BITRE 2009a
Note: Vessels have a capacity greater than 2000 dwt.

the maritime expertise necessary to an island economy.[3] This has led the government to encourage Australian vessels to provide coastal shipping services but not to give preference to Australian-flag vessels in international trade.

The new policy was implemented through two reforms of the Ministerial Guidelines in 2008 and 2009. According to a new preamble to the guidelines in 2008, the government's intention was 'to enhance the competitiveness and sustainability of the Australian coastal shipping sector'. In 2009 some terms of the guidelines were clarified in the interests of transparency and accountability. For example, one condition for the issuing of a permit is that there is 'no suitable licensed ship available'. A new guideline now defines what are an 'available licensed ship' and a 'suitable licensed ship'.

Nevertheless, the main policy change has been wrought through the coverage of licensed and permit vessels in the Fair Work Act (FWA), the legislation that governs employment terms and conditions in Australia. The Seagoing Industry Award 2010 is the regulation that among other things applies the FWA to the coastal shipping sector. According to the new regulation, since 2010 licensed vessels are now subject to scrutiny (licensed vessels were required to offer Australian crew wages and conditions before the coverage by the FWA, but there was no formal inspection regime). According to the Seagoing Industry Award 2010, from 2011 permit vessels will also have to comply with requirements in terms of minimum wages, hours of work and rest periods. These requirements are high and, in fact, very close to prevailing Australian domestic conditions.

13.3.2 Shipping agreements

In 2005, following a review of Part X of the Trade Practices Act by the Productivity Commission, the government reformed the legislation on the exemption of liner shipping agreements from the Act. The main changes consisted in the introduction of new provisions on contract confidentiality. Even before the reform, the majority of cargo was carried under individually negotiated service contracts between carriers and shippers and thus at freight rates differing from, and usually below, listed conference rates. As in the airline industry, this trend reflected competition between carriers in a situation of rapidly increasing capacity. This Australian reform has strengthened market forces, just as reforms in other economies have had a direct impact on their liner shipping sectors. Since 1998, when the USA took similar measures to Australia concerning confidentiality, conferences have less and less influence on the routes between the USA and Australia. Finally, in 2008, the European Community (EC) decided to repeal the exemption on shipping agreements and as a result, conferences are now prohibited on the routes to and from Australia and the EC.

A review of all Australian shipping agreements registered since 2000 shows 112 active agreements (Australian Department of Infrastructure, Transport, Regional Development and

[3] Of 38 Australian flagged vessels in 2007, four were tankers (two each for crude oil and petroleum product) and four were LNG tankers (BITRE 2008).

Local Government pers. comm.). Most of these agreements are operational (Table 13.3), yet only four still active conferences serve the following routes:

- eastern and southern Australia to Japan and Korea;
- Australia; Papua New Guinea; and the Pacific Islands;
- ports in the Philippines; Borneo; Hong Kong, China; Chinese Taipei; China; Japan; and Korea to ports in Australia; and
- Australia northbound to ports in the Philippines; Hong Kong, China; China; Japan; and Korea.

Table 13.3: Active shipping agreements by type as at February 2010.

Operational agreements	Conferences	Discussion agreements	Others	Total
71	4	17	20	112

Source: Australian Department of Transport 2010.

Thus, conferences appear to serve less and less routes to or from Australia. Furthermore, according to most experts, conference rates are seldom applied. It may therefore be concluded that Australia's liner shipping market is competitive. Considering the now minor importance of conferences, it may be said that the relevant section of the Trade Practices Act about conferences is now almost redundant and that shipping agreements are a non-issue in Australia. This situation is unlikely to change until demand for liner shipping catches up with the overcapacity that existed even before the global financial crisis.

13.3.3 Infrastructure and related services

In Australia, as for most developed economies, the regulatory problems involved in international shipping deal with port infrastructures and related services. Australia faces several challenges in this area: to ensure competition and contestability in regulated services (most particularly in the container handling sector), to provide a consistent regulatory framework for the funding of infrastructure and to promote coordination between the different parts of the supply chain. This section addresses container terminals and bulk terminals.

13.3.3.1 Container terminals

This section focuses on the five main Australian container ports: Melbourne, Sydney, Brisbane, Fremantle and Adelaide, each a main port of one of the mainland Australian states. In 2008 they represented 35%, 29%, 15%, 9% and 4% respectively of the total TEUs handled in Australia (Ports Australia 2010). In 2008 the port of Melbourne handled more than 2 million TEUs.

Comparison of performance between Australian and overseas ports can be made in terms of three indexes: the crane rate, TEUs throughput per berth metre and TEUs throughput per gross hectare. The crane rate is computed by dividing the containers handled by the total allocated crane hours and is expressed in containers per hour. The TEU throughput per berth metre is computed by dividing the TEU throughput by the total length of container terminals berths. Finally, TEU throughput per gross hectare is a measure of container yard productivity with respect to the transfer of containers to and from the ships. All these data come from a report led by the Bureau of Infrastructure, Transport and Regional Economics (BITRE 2009b).

As cranes are big investments for terminal operators, the crane rate could be seen as an index of capital productivity. The crane rate in the five Australian ports is lower than leading international ports like Hong Kong, China, Shanghai and Long Beach (Figure 13.4).

Nevertheless, the crane rate in Australian ports is higher than in smaller ports like Hamburg or Gothenburg. Interestingly, the crane rates of Australian ports are very close to each other.

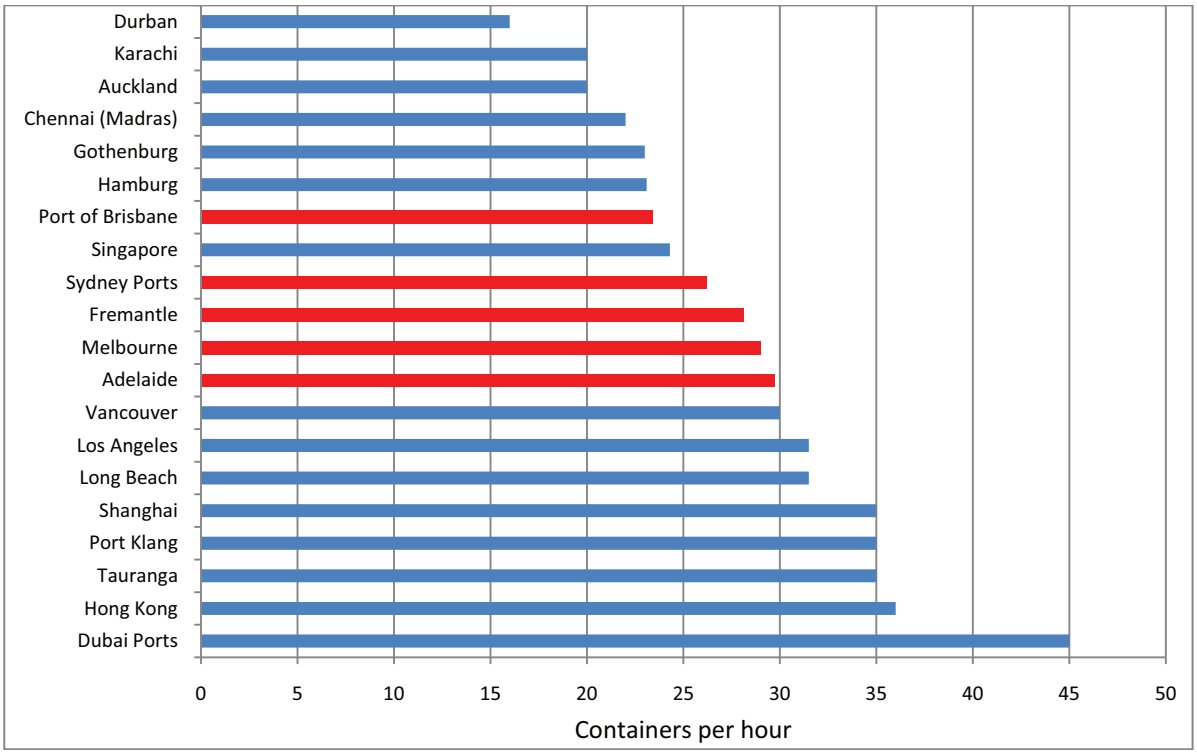


Figure 13.4: Crane rate at selected ports, 2005–07. (Source: BITRE 2009b)

As regards the TEU throughput per berth metre index, the picture is even worse than the crane rate, except in Melbourne and to a lesser extent in Sydney (Figure 13.5).

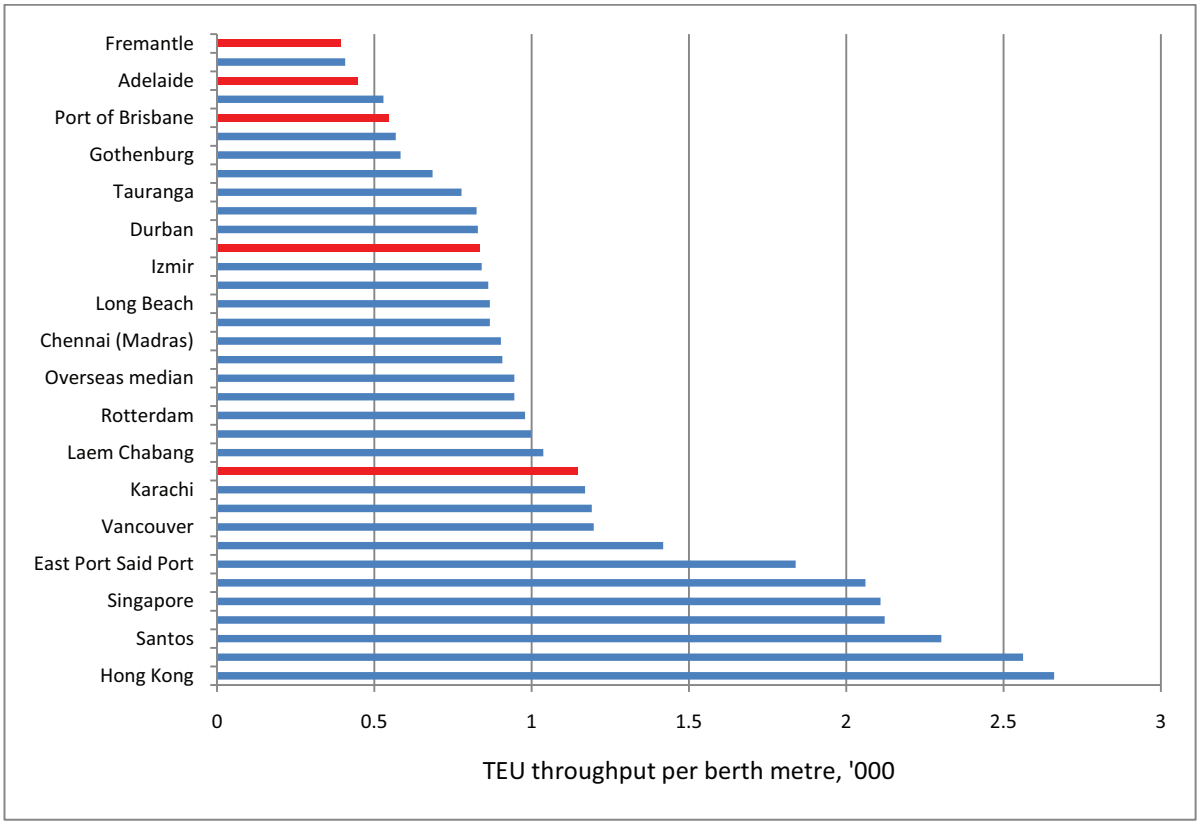


Figure 13.5: TEU throughput per berth metre, 2006–07. (Source: BITRE 2009b)

Not surprisingly, both TEU throughput per berth metre performances and yard utilisation measured as TEU throughput per gross hectare are very close (Figure 13.6).

Overall, we can say that the performance of all five main Australian ports is quite low in terms of international comparisons. In order to explain this poor performance, we suggest two arguments: a lack of exploitation of economies of scale and a lack of inter- and intra-port competition.

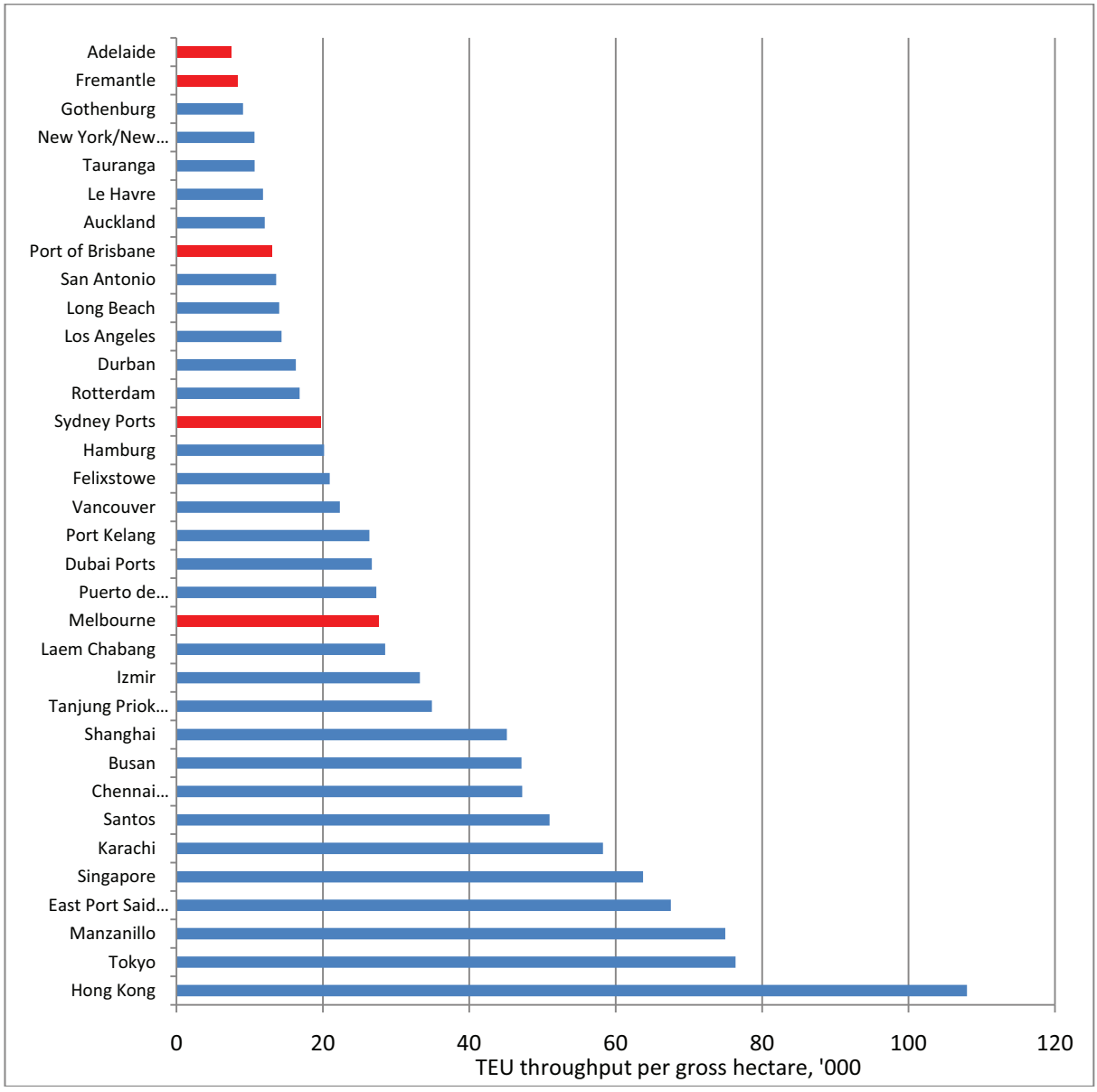


Figure 13.6: Yard utilisation measured as TEU throughput per gross hectare, 2006–07. (Source: BITRE 2009b)

In regard to economies of scale, the number of TEUs handled in Australia is quite small in comparison with most overseas ports in the sample (Figure 13.7). This is due to the logistics of international shipping and ports in Australia. Indeed, most container vessels serving Australia call at least three and often four or five main ports, being the main port in each state. Australian ports are organised as hinterland ports (i.e., they only serve their own hinterland unlike a hub and spokes system).

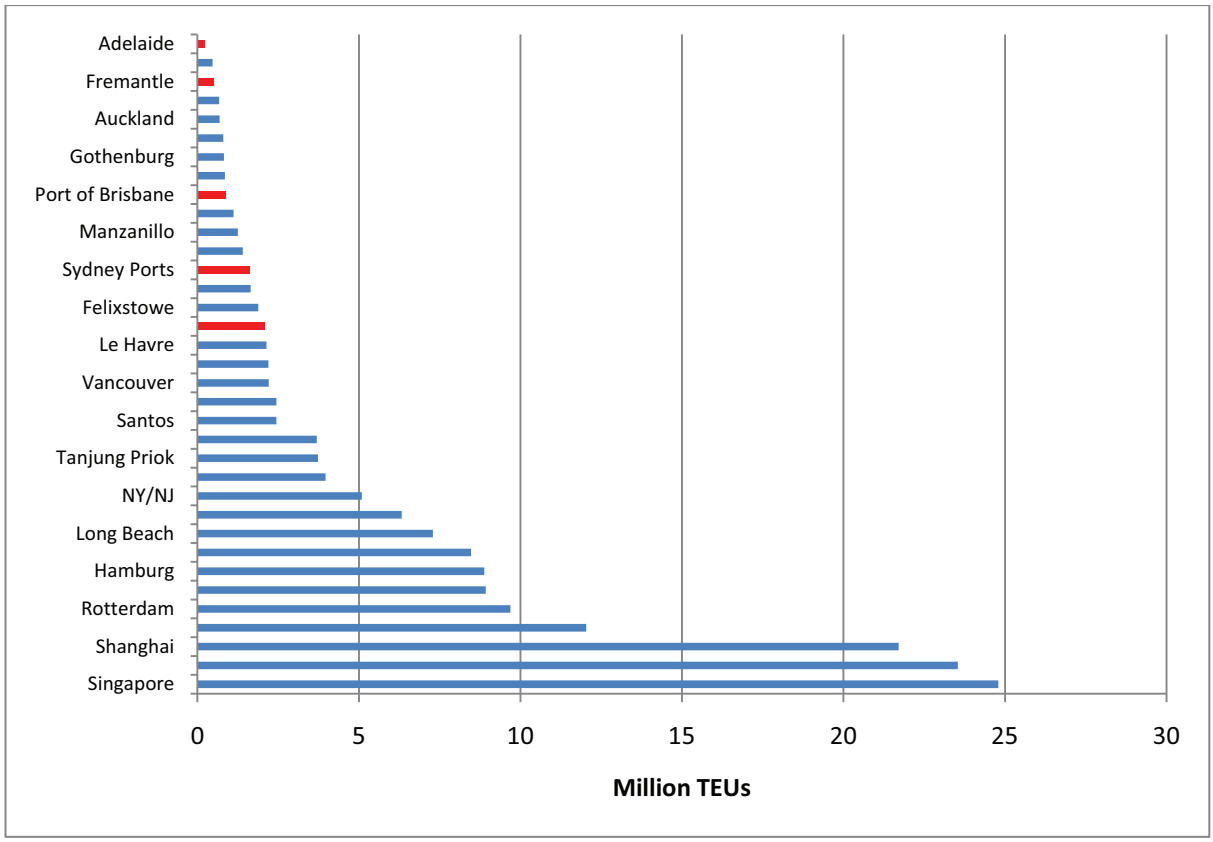


Figure 13.7: TEUs handled in overseas ports, 2006-07. (Source: BITRE 2009b)

This system of fragmented logistics has a direct impact on the number of containers handled in each port and makes it very hard for Australian ports to take advantage of economies of scale. This presumption is reinforced by simple correlations computed between the number of TEUs handled and port performance indexes: see Figure 13.8.[4]

A second explanation for the poor performance of Australian ports could be the lack of competition in stevedoring. In the four largest ports the market is characterised by a duopoly with the same duopolists present; and one of them is the monopolist in Adelaide (Table 13.4). More importantly, each provider has almost the same capacity in each port – measured in terms of berth length and in cranes. This situation can lead to inefficiencies in the sector.[5] The small number of providers in each port harks back to the lack of economies of scale, that is to say the traffic in each port would not justify the entry of a new terminal operator if 0.5–1.0 million TEU per annum is taken as a minimum efficient scale. The modest growth in container traffic also means that a new entrant would need to attract a substantial amount of custom from existing terminals.

[4] These are simple correlations and many factors could explain port performances. Nevertheless, it is interesting to see the positive correlation between the volume of TEUs handled and the indexes of performance.

[5] Moreover, assuming symmetric costs and competition *a la Cournot* (i.e., on quantity), firms make over profits.

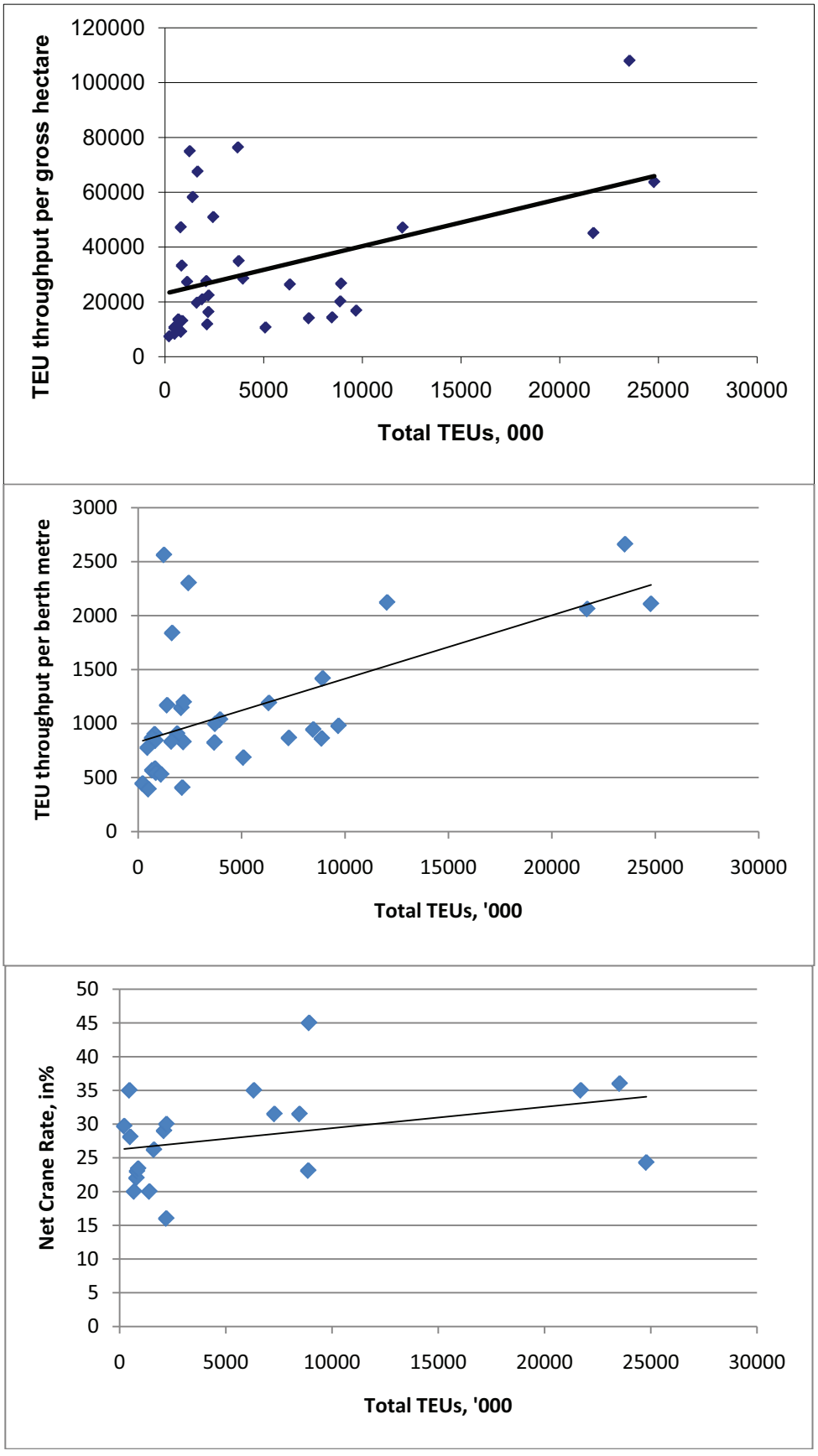


Figure 13.8: Simple correlations – TEUs handled and port performances, 2006-07. (Source: Computed from data from BITRE 2009)

Table 13.4: **Market structure and capacities at the main Australian ports, early 2010.**

Port	Operators	Berths length [a]	Portainers [b]
Melbourne [c]	Patrick	885	8 (3)
	DP World	944	8 (3)
Sydney - Port Botany [d]	Patrick	1006	8 (n.a.)
	DP World	936	7 (n.a.)
Brisbane [e]	Patrick	900	5 (2)
	DP World	900	6 (4)
Fremantle - Inner Harbour	Patrick	726	3 (3)
	DP World	526	3 (0)
Adelaide - Outer Harbor	DP World Adelaide Pty Ltd	660	4 (0)

Source: Ports Australia 2010.
Notes: (a) Metres; (b) In brackets, the number of Post Panamax Cranes; (c) The Port Corporation of Melbourne announced it will host a third container stevedore by 2013; (d) The NSW government announced in December 2009 that Hutchinson Port Handling (HPH) will be the operator of the new third container terminal at Port Botany from 2012; (e) HPH signed a 42-year lease agreement in January 2008 to operate a third container terminal, commencing in 2012.

Since 2003 the Australian Consumer and Competition Commission (ACCC; the government agency in charge of monitoring competition in Australia) has drawn attention to the lack of intra-port competition with statistical evidence. In its Container Stevedoring Monitoring Report the ACCC (2003) stated: 'The existence of monopoly or duopoly suppliers immediately raises questions about the extent of competitive pressures within the markets. The evidence available to the ACCC in that regard is mixed but does raise some concerns about the contestability of the market'. Then the ACCC (2007) stated: 'The amount paid for [the takeover of] Patrick reflects expectations of profits that are available when a small number of firms operate in an industry where price competition is less effective'. The ACCC (2008) said: 'It is clear that some of the planned expansion in terminal capacity creates the possibility of new entry to at least some ports. Thus potentially, the number of competitors could rise from two to three'. The global financial crisis in 2009 increased the presumption of a lack of competition within Australian ports: 'The ability of the stevedores to sustain price levels despite reduced demand and short-term increases in unit costs while also making strong positive returns reinforce the ACCC's concerns about the intensity of competition' (ACCC 2009).

The lack of intra-port competition along with the concerns of shippers has led to some policy response. In 2006 the Council of Australian Governments (COAG), being the Federal and state and territory governments, came to an agreement concerning infrastructure competition. The Competition and Infrastructure Reform Agreement (CIRA) sought to achieve a simpler and more consistent national approach to economic regulation in significant infrastructure. It also asked state governments to review their regulations to ensure that ports are managed efficiently, to allow for competition in the provision of port and related infrastructure and to maximise the opportunity for competition. The main objective of the CIRA was to promote competition, as this would lead to efficiency gains that would finally benefit all consumers.

One important impact of the agreement has been to trigger the entry of new container handling providers in the ports of Brisbane and Sydney and soon also in the port of Melbourne (Table 13.4, notes). However, there have been almost no changes to state government regulations (the relevant level of decision making for port regulations). The only change occurred in New South Wales where the state government has issued a new framework for infrastructure leases which provides incentives for the stevedore to meet performance benchmarks in return for discounts on rental leases. It also threatens to scrap a lease agreement if the terminal operator fails to follow through on investment commitments.

13.3.3.2 Bulk port terminals

Because of the importance of raw materials exports for the Australian economy, efficient bulk port terminals are crucial. Yet in recent years, with the rapid and unanticipated growth in demand, there has been under capacity and congestion in many ports, especially at coal terminals. Table 13.5 shows the dramatic situation in coal terminals: as at May 2009 the waiting time for loading coal at the port of Newcastle and the Dalrymple Bay terminal at Hay Point could be 14 days. No other overseas coal ports suffer from this level of congestion.

Table 13.5: Waiting time for vessels at major coal terminals as at 21 May 2009 (days).

Economy	Pacific Ports	Days		Economy	Atlantic Ports	Days
Australia	Newcastle (Kooragang Terminal)	10–14		Colombia	Puerto Bolivar	0–3
Australia	Newcastle (Dyke Terminal)	8–12		Colombia	Cartagena (Colclinker)	0–1
Australia	Hay Point (Dalrymple Bay Terminal)	7–14		Colombia	Prodeco (Santa Marta)	0–1
India	Haldia	1–6		Colombia	Puerto Drummond	0–1
Australia	Hay Point (Hay Point Coal Terminal)	1–5		Netherlands	Rotterdam (EECV)	0–1
Australia	Gladstone	1–4		Netherlands	Rotterdam (St Laurenshaven Terminal)	0–1
India	Chennai (Madras)	1–4		Netherlands	Amsterdam (OBA Terminal/Rietlanden)	0–1
India	Paradip	0–7		Netherlands	Rotterdam (EMO)	0–1
Australia	Port Kembla	0–5		Netherlands	Ijmuiden (Outer Quay No.2–Corus)	0–1
China	Xingang (Tianjin)	0–2		USA (EC)	Norfolk (Norfolk Southern Coal Pier)	0
Chinese Taipei	Kaohsiung (TPC Terminal)	0–2		USA (EC)	Norfolk (Dominion Coal Terminal)	0
Australia	Abbot Point	0		USA (EC)	Norfolk (Pier IX Terminal)	0
Australia	Brisbane	0		USA (EC)	Baltimore (Consol CMTI Terminal)	0
China	Qingdao	0		South Africa	RBCT	0
China	Rizhao	0		Brazil	Praia Mole Coal Terminal	0
China	Lianyungang	0		Brazil	Itaguai (Sepetiba)	0
China	Qinhuangdao	0		Brazil	Vila do Conde	0
China	Huangpu	0				
India	Tuticorin	0				
India	Pipavav	0				
Canada (WC)	Ridley Island Coal Terminal	0				
Canada (WC)	Roberts Bank (Westshore Terminal)	0				
Canada (WC)	Vancouver (Neptune Terminal)	0				
Chinese Taipei	Kaohsiung (CSC Terminal)	0				

Source: Global Port 2010.

At iron ore terminals the situation is less acute but waiting times for the loading of vessels are also significant (Table 13.6). Congestion and bottlenecks in coal port terminals leads to loss of sales and reduced profits and taxes, which leads to export revenue losses for Australia.

Because of differences in regulatory regimes between states and because of differences in the schemes of exploitation of terminals within states (see Section 13.2) it is difficult to provide a common analysis. Because coal is one of Australia's leading exports, the main focus is on these terminals, specifically the ports of Newcastle and Hay Point (Dalrymple Bay and Hay Point Coal Terminals), where the waiting times are longest. In January 2010 the *Financial Times* reported that 'Ships are queuing for an average of 27 days to collect coal at Dalrymple Bay in Queensland, Australia'. As at midnight 3 March 2010, 48 vessels were anchored off Newcastle waiting to load coal (Hunter Valley Coal Chain Coordinator 2010).

There are various reasons for the now notorious congestion at Australian coal terminals, including periodic bad weather and interruptions to shipments on the landward side. Another is the shipowners' habit of placing their ships in the queue to improve their prospects of charter. This market imperfection is being addressed by the introduction of an advance booking system that requires a vessel to be fixed for a specific cargo. Nevertheless, long vessel waiting times are primarily the result of lags in investments in port capacities.

Table 13.6: Waiting time for vessels at major iron ore terminals as at 21 May 2009 (days).

Economy	Port	Days	Economy	Port	Days
China	Rizhao	3-10	China	Lianyungang	0
China	Beilun (Ningbo)	3-4	Australia	Esperance	0
China	Caofeidian	2-16	Australia	Whyalla	0
China	Qingdao	2-9	China	Qinhuangdao	0
India	Chennai (Madras)	2-3	Australia	Port Latta	0
Australia	Port Hedland	1-7	Australia	Port Kembla	0
Australia	Port Walcott	1-6	Chinese Taipei	Kaohsiung (CSC Terminal)	0
India	Mangalore	1-4	China	Huangpu	0
Australia	Dampier	1-2	Australia	Geraldton	0
China	Baoshan (Baosteel)	1-2	Brazil	Itaguai - CPBS-CVRD (Sepetiba)	1-2
China	Xingang (Tianjin)	0-19	Brazil	Tubarao (North Pier 1)	0-5
India	Haldia	0-5	Brazil	Tubarao (Pier 2)	0-4
China	Fangcheng	0-4	Brazil	Itaguai - CSN Terminal (Sepetiba)	0-3
China	Nantong (Yaogang Terminal)	0-3	Brazil	Ponta da Madeira (Pier 2)	0-2
China	Lanshan	0-3	Brazil	Ponta da Madeira (Pier 3)	0-2
China	Yantai	0-2	Netherlands	Ijmuiden (Outer Quay No.2-Corus)	0-1
India	Paradip	0-2	Netherlands	Rotterdam (EMO)	0-1
China	Dalian	0-2	Brazil	Guaiba Island	0-1
China	Shanghai (Luojin Terminal)	0-1	Brazil	Ponta da Madeira (Pier 1)	0-1
China	Shanghai (Luhuashan Terminal)	0-1	Brazil	Ponta Ubu	0-1
China	Bayuquan	0-1	Brazil	Tubarao (South Pier 1)	0
China	Baoshan (Majishan)	0-1	Brazil	Salvador	0

Source: Global Port 2010.

Although the lack of port capacity was identified at Newcastle and Hay Point in 2003, the first investment was not committed until 2005 and did not come on stream until 2007 (Table 13.7). Investors have argued that these lags were attributable to the inefficient regulatory framework, which also differs between states (Annex Table A13.1). The complexity of the regulation and long decision times within and between government agencies leads to delays in project design, approval and implementation. On average, approval by state government regulators takes more than a year (Exports and Infrastructure Taskforce 2005).

Waiting times are not just a problem of terminal loading capacity, there are also bottlenecks in the supply chain, most notably in rail freight infrastructure. Lack of coordination in investment in port and rail infrastructure is especially a problem in the port of Newcastle, where 99% of coal is transported from mines to the port by rail. In 2005 the Australia Export's Infrastructure Report stated 'In early 2000, in the Hunter Valley, the throughput increased 20% without any significant capital investment in rail infrastructure for the movement of coal from the mine to the port' (Exports and Infrastructure Taskforce 2005). In

Table 13.7: New infrastructure projects – coal.

	Project	Company	Capacity	Phase	Timing	Capital exp.
Newcastle	NCIG export terminal (Newcastle Coal Infrastructure Group)	NCIG	New capacity of 30 Mtpa	Feasibility study Government approval Under construction Expected Startup	2nd semester 2006 2nd semester 2007 1st semester 2008 2010	US$1.1b (A$1.3b
	Kooragang Island coal terminal expansion - Phase 1	Port Waratah Coal Services	Capacity increase from 89 to 102 Mtpa	Feasibility study Under construction Startup	2nd semester 2005 1st semester 2006 2007	$170m
	Kooragang Island coal terminal expansion - Phase 2	Port Waratah Coal Services	Capacity increase of 11 Mtpa	Commitment Under construction Expected Startup	1st semester 2007 1st semester 2008 2010	$456m
	Kooragang Island coal terminal expansion - Phase 3	Port Waratah Coal Services	Capacity increase of 27 Mt	Feasibility study Expected Startup	2nd semester 2006 n.a.	$1b
Hay Point	Dalrymple Bay Coal Terminal 7X expansion project - Phase 1	Babcock & Brown Infrastructure	Capacity increase from 60 to 68 Mtpa	Commitment Under construction Startup	2nd semester 2005 2nd semester 2006 2008	$600m
	Dalrymple Bay Coal Terminal 7X expansion project - Phase 2 and 3	Babcock & Brown Infrastructure	Capacity increase from 68 to 85 Mtpa	Commitment under construction Expected Startup	2nd semester 2006 2nd semester 2007 2009	$679m
	Hay Point Coal Terminal - Phase 2	BHP Billiton Mitsubishi Alliance (BMA)	Capacity increase from 40 Mtpa to 44 Mtpa	Under construction Startup	1st semester 2006 2007	$70m
	Hay Point Coal Terminal - Phase 3	BHP Billiton Mitsubishi Alliance (BMA)	Capacity increase from 44 Mtpa to 55 Mtpa	feasibility study Expected Startup	1nd semester 2006 2014	$500m

Source: ABARE various years.

the Hunter Valley, activities along the supply chain are vertically separated, so bottlenecks might be explained by a problem of coordination between the various players of the logistic chain. The Australian Rail Track Corporation (ARTC) manages 311km of coal rail infrastructure in the Hunter Valley and Pacific National, a private operator, transports most of the coal transported by rail. There are three terminal operators – two in operation and one being commissioned.

The Australian government has taken some steps to address congestion and bottlenecks. In 2008 it passed the Infrastructure Australia Act, creating a new government body called Infrastructure Australia (IA) with a charter to take an intermodal approach. The IA's role is to advise Australian governments on policy and regulatory reforms and on barriers or disincentives to investment. Its operational mission is to define infrastructure priorities to be financed by the Building Australia Fund. A major achievement of IA so far is the publication of the National Public Private Partnership Policy and Guidelines (the PPP Guidelines), which provide a clear, consistent and predictable framework for awarding contracts through a more rigorous process and following more streamlined procedures. The PPP Guidelines have been endorsed by all state governments.

Concerning the Hunter Valley coordination issue, some improvements have also been achieved. In 2004 an agreement was taken to lease the Hunter Valley coal railways to ARTC (Table 13.8). The lease agreement began to have effect from 2005. The rail capacity in Newcastle was increased to 60Mtpa in 2006. Nevertheless, because of the lags involved, it took some time for the necessary investments to be designed and contracted out. Furthermore, problems of coordination persist in the Hunter Valley. Indeed, many rail projects are under way but they have been at the first stage of development for a long time. This is due to the functioning of the rail network access regime. Actually, in the Hunter Valley the rail track is 'open access' and the principle of non-discrimination is applied (i.e., the rail operator cannot refuse to supply the service). According to this system, in the current situation of congestion an increase of demand of one unit leads to an equivalent decrease in the supply for the other consumers. The capacity constraint is managed by the quantity, and as a result consumers face the average cost and not the marginal cost if the outcome is not efficient. The price of the service is too low and does not cover the cost of the necessary investments. This explains the lack of investment in rail in the Hunter Valley. By contrast, in Dalrymple Bay, coal transport is provided on a fully commercial basis, with contracts between miners and transport service providers. There is no problem of vertical coordination in investment between the quayside and the landside operators.

Table 13.8: ARTC coal infrastructure expansion projects in New South Wales.

Project	Location	Phase	Timing	Expected Startup	New Capacity	Capital Expend. [a]
Minimbah Bank third rail line - stage 1	Minimbah to Whittingham (10km)	Under construction	Since second semester 2009	2010	n.a.	$134m
Scone - Parkville duplication	Scone - Parkville	Feasibility study under way	Since second semester 2009	2013	n.a.	$60m
Koolbury - Aberdeen duplication	Koolbury - Aberdeen	Feasibility study under way	Since second semester 2009	2013	n.a.	$60m
Export terminal arrival tracks	Newcastle	Feasibility study under way	Since second semester 2009	2011	n.a.	$50m
Drayton Junction rail upgrade	13 km S of Muswellbrook	Feasibility study under way	Since second semester 2008	2010	n.a.	$270m
Minimbah - Maitland third road rail	Minimbah to Maitland (30km)	Feasibility study under way	Since first semester 2008	2012	n.a.	$270m
Minimbah - Bank third road rail	10km S of Singleton	Feasibility study under way	Since second semester 2008	2010	n.a.	$100m
Muswellbrook - Koolbury duplication	Muswellbrook to Koolbury (5km)	Feasibility study under way	Since first semester 2008	2011	n.a.	$35m
Liverpool Range rail project	Willow Tree to Murrurundi (30 km)	Feasibility study under way	Since second semester 2007	2012	Capacity increase of 12.5 Mtpa	$290m
Sandgate rail grade separation	Sandgate, between Newcastle and Maitland	In operation	Since 2006	-	Capacity increase of 60 Mtpa	$68m

Source: ABARE various years.
Note: (a) Includes cost of development, plant and equipment.

13.3.4 Consequences of changes and scope for further reform

13.3.4.1 Coastal shipping

The recent changes introduced by the government do not change the regulatory regime of coastal shipping but they will affect its implementation. The reforms of the Ministerial Guidelines and, most particularly, the extension of the Fair Work Act to licensed and permit vessels will increase the labour operating costs for foreign-flag vessels. At the same time it will make the Australian-flag fleet more competitive with foreign-flag vessels. The higher operating costs of foreign-flag vessels are likely to lead to some increase in freight rates over the next few years, depending on how strictly the Act is applied. It remains to be seen how willing foreign owners will be to meet Australian labour standards and how interested Australian investors will be to place Australian-flagships in coastal trades.

Finally, it is important to note the argument that there is a substantial benefit to Australia as an island economy in maintaining a viable maritime industry of its own, with the supply of skills to all ancillary areas that this entails.

13.3.4.2 Shipping agreements

Within the area of competition, Part X of the Trade Practices Act may now validly be regarded as a non-issue. Nevertheless, the current system is burdensome for carriers and expensive to manage for the government. Some adjustments to the regulations could improve this situation.

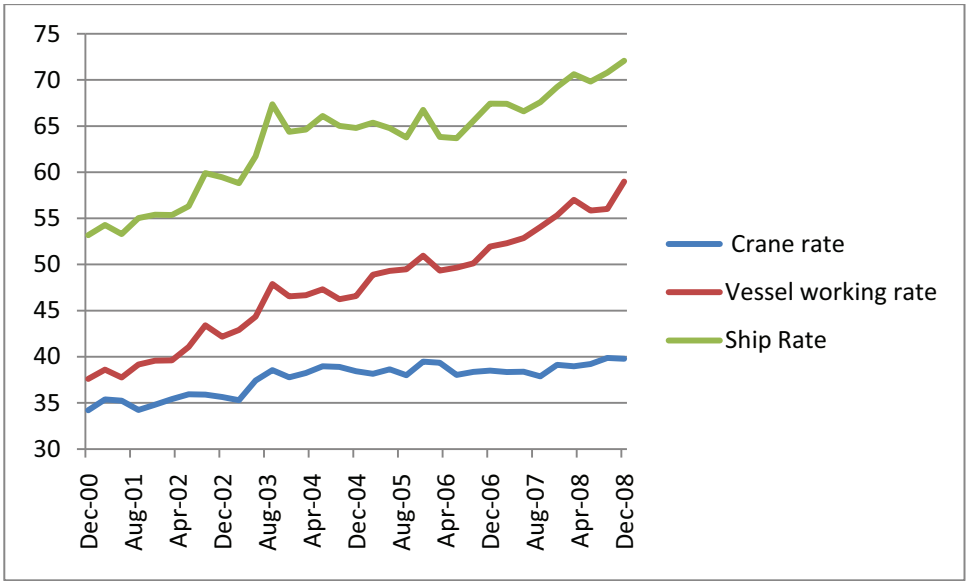
Actually, we can imagine a system which would be similar to the EC regime. The conference element of the regulations, which is outdated, could be repealed and substituted by a new and softer regulation that would cover only operational agreements that have market outcomes.

13.3.5 Infrastructure and related services

13.3.5.1 Container port terminals

The lack of exploitation of economies of scale in the container handling sector can be seen as part of a more general problem, one of either competition or coordination between ports. The absence of port rationalisation raises not only the question of lack of economies of scale but also of the duplication of costs for port authorities, notably the cost of dredging because of the increasing size of container ships. Nevertheless, in the absence of massive investments in rail and road infrastructure, a hub and spokes system is not sustainable in Australia. Given Australia's geography and infrastructure, a hinterland system is more efficient for carriers and route patterns are adjusted accordingly. For example, on the busy Singapore–Australia–Singapore route it is more efficient for carriers to take the western route and use the favourable ocean currents than to sail around Australia from Fremantle, on to Adelaide, Melbourne, Sydney and Brisbane and then back to Singapore. In other words, Australian ports are complementary and not substitutable.

Regarding competition in the container-handling sector, port productivity increased substantially in the early 2000s but has stagnated since 2003 (Figure 13.9). The entry of new providers in the main three ports will increase competition and may lead to improved performance in the next few years.



Notes: The vessel working rate as a measure of labour productivity is computed as the total containers handled divided by the elapsed labour time. The ship rate measures the combined stevedoring productivity of capital and labour. Both indicators and the crane rate are expressed in containers per hour.

Figure 13.9: Port performance indicators, average of the five main ports, in TEUs per hour. (Source: BITRE website 2010)

Nevertheless, the entry of new terminal operators will not of itself lead to better productivity and pricing outcomes. State governments, through their port corporations, still own the channels, land and immobile port infrastructure, and regulate the entry of new providers. There is a clear conflict of interest between these responsibilities. State governments have little incentive to reduce returns on their assets when port revenues represent a significant share of state revenues (McInerney et al. 2007).

There may be scope for an independent regulator (at federal or state level) whose role would be to ensure competition and contestability in the market. Although ACCC might have the regulatory power to mandate the entry of a new service provider to port corporations it only nominally plays this role, as it is in fact just a monitor and an adviser. So another solution might consist in enhancing shipper pressure through the ACCC.

13.3.5.2 Bulk port terminals

The new terminal and landside capacities coming on stream will relieve the immediate problems of port congestion (see Table 13.7). The implementation of the new booking system will also help to coordinate the arrival of vessels in ports and limit the number of vessels queuing.

The PPP Guidelines do not cover direct private investment in infrastructure such as bulk terminals. While public-private partnership is a sensible mode of funding port infrastructures, especially in ports where there are only a few main users, more care by state governments in the design of the PPP Guidelines would reduce uncertainty and improve the investment climate. The pernicious pressure from state treasuries to require up-front payments creates an unbalanced structure of debt and an excessive burden of debt service. This is another reason why there is much to be gained from improvements to the PPP Guidelines, for instance, in coordinating the regulatory framework between states, the issuing of new guidelines and limiting the time for project approval.

Over the longer term, Infrastructure Australia (IA) should help to overcome delays in scheduling and financing further necessary investments. Prioritisation of public investments in infrastructure would give clarity to investors and allow long term strategic planning (PricewaterhouseCoopers 2009). It would also decrease the uncertainty for private investment in infrastructure.

IA should also help to overcome the lack of coordination in infrastructure investments, especially by way of integration across the national freight network – a lack of coordination in investment that is also true for other infrastructures and other parts of Australia, An example is the bottleneck in Sydney between the port and the southbound road. But IA will not help to address the persistent problem of coordination between ports and rail users in the Hunter Valley. One solution could consist of shifting from the open access system to access by auction, a system that would reveal the real price of the service and make funds available for investment in new capacities.

13.4 CONCLUSION

In Australia the maritime transport industry is characterised by fairly open markets under liberal commercial regulations. Indeed, for most maritime services there are neither artificial barriers to entry nor restrictions to trade.

Coastal shipping is the best example of the openness of Australia in comparison with many overseas regimes. This remains the case despite the Australian government's decision to re-introduce Australian wages and conditions to the manning of foreign-flag ships engaged under permit in coastal trade. While this may be viewed as a step towards the reintroduction of cabotage, in fact it removes an exceptional loophole in Australian labour regulations. The reform does not discriminate between ownership and flag of operation. There is a further objective of strengthening the Australian-flag fleet, which is justified by the strategic need of an island nation to sustain a maritime capability. A tonnage tax is presently under consideration.

The exemption of liner shipping agreements from the competition rules has become a non-issue because the liner shipping market is now highly competitive and conference agreements no longer have binding force. Nevertheless, the registration system could be simplified to maintain transparency but reduce the cost and burden of administration.

In Australia, as indeed for most of economies, the balance between light-handed and heavy-handed regulation is difficult to find. Australia provides good examples of these difficulties. Thus, in the container-handling sector, regulation needs to be firmer in order to ensure competition and contestability, while by contrast, in Newcastle's coal terminals, regulation is heavy-handed, even though market driven mechanisms would lead to better outcomes.

The other big challenge concerns the ability of the government to adopt an intermodal approach that takes into account the logistics revolution of recent decades. The big task is now to facilitate coordination between the different modes, both in the harmonisation of regulation between the states and in the prioritisation and financing of large components of infrastructure.

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ANNEX 13

Table A13.1: Port regulatory regimes in various Australian states.

	Agencies and regulators	Status	Mission
Victoria	DoT	Not independent	Strategy and safety
	Essential Services Commission	independent	Price monitoring for shipping channels, berths and short term storage and cargo marshalling facilities
	Department of Planning and Community Development	Not independent	Planning and project approval
New South Wales	NSW Maritime	Not independent	Providing strategic advice to the three NSW Ports Corporations, coordination of maritime security arrangements across NSW, development of advice on shipping and safety matters at NSW ports, oversight of the implementation of the NSW Ports Growth Plan
	Department of Planning	Not independent	Planning and project approval
	independent Pricing And Regulatory Tribunal (IPART)	independent	Oversees regulation in the electricity, gas, water and transport industries and undertakes other tasks referred to it by the NSW Government.
Queensland	Queensland Competition Authority [c]	independent	Assess and approve access undertakings for ports declared for Third Party Access, arbitrate access disputes, enforce breaches of access obligations, investigate and monitor prices for ports declared for monopoly prices oversight and assess competitive neutrality
	Maritime Safety Queensland	Not independent	Maritime safety, delivering essential maritime services such as pilotage
	Department of Transport and Main Roads	Not independent	Policy and strategic advice on the planning, funding and performance of Queensland's port, overseeing the operation of the state's port authorities, provides policy and procedural advice about government-owned corporations
	Department of Infrastructure and Planning	Not independent	The Coordinator-General is responsible for deciding if Queensland's most important and complex private and public projects require whole-of-government management as significant projects, and coordinates an environmental assessment process on behalf of the state government
Western Australia	DoT	Not independent	Security and safety, formulating and implementing suitable policies relative to ports, funding for the WA Port Operation Taskforce
	Department of Planning	Not independent	Planning and project approval
	WA Port Operation Taskforce	Not independent	Identify operational impediments to passage of goods and vessels through Western Australian ports, determine practical measures to overcome those impediments
	Economic Regulation Authority	independent	Maintain a competitive, efficient and fair commercial environment, particularly where businesses operate as natural monopolies, for the benefit of the Western Australian community.
South Australia	Department for Transport, Energy, Infrastructure	Not independent	Safety, security, environment, Policy and Planning, identifying infrastructure priorities for South Australia (SA), coordinating infrastructure planning and development and facilitating the timely delivery of key projects.

Sources: State government websites 2010.

Table A13.2: Recent policy changes in maritime transport.

Sector	Area of policy change	Associated regulation	Year of change	Description of change
Coastal shipping	Regulation	Review of the Ministerial Guidelines	2008	Introduction of a preamble setting new objectives of the government
				Clarification of key terms in a concern of transparency and accountability
			2009	
				Coverage of licensed and permit vessels by legislation that governs workplace relations
Liner shipping	Competition rules	Review of Part X of the Trade Practice Act	2005	Introduction of new provisions on contracts' confidentiality
Infrastructures [a]	Regulation and competition	The Competition and Infrastructure Reform Agreement (CIRA)	2006	Objective to achieve a simpler and consistent national approach. State Governments have to review their regulations to ensure competition
Infrastructures	Creation of a new governmental body	Infrastructure Australia Act	2008	IA Provides advices to Australian governments about policy and regulatory reforms, it define infrastructure priorities, it issued PPP Guidelines. IA is the only Australian institution with an intermodal view
Port infrastructures [b]	Lease framework	Port and Maritime Administration Amendment	2008	Provides incentives for the stevedore to meet performance benchmarks in return for discounts on rental leases. Carries threats if the terminal operator fail to follows investment commitments

Notes: (a) Agreement between the members of the Council of Australian Governments (COAG); (b) In New South Wales.