

FILE No:

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MARS/PRISM:

## Form G

Commonwealth of Australia

Competition and Consumer Act 2010 -- subsection 93 (1)

### NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the Competition and Consumer Act 2010, of particulars of conduct or of proposed conduct of a kind referred to in subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

#### 1. Applicant

(a) Name of person giving notice:

N95450

**VICTORIAN CONTAINER MANAGEMENT PTY LTD**

(b) Short description of business carried on by that person:

The management and operation of an empty container park.

(c) Address in Australia for service of documents on that person:

433A Somerville Road, Tottenham, Victoria 3012

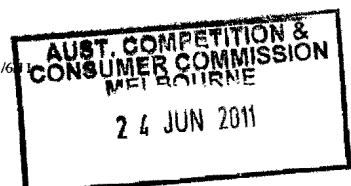
#### 2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The management of container movements to and from the Applicant's container park.

(b) Description of the conduct or proposed conduct:

If a transport company wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport company must pre-book space via the nominate website which will include the transport company accepting the Applicant's **Terms of Use** (copy attached).



**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

The Victorian transport and logistics industry, including container transport services operators.

**(b) Number of those persons:**

**(i) At present time:**

None at present

**(ii) Estimated within the next year:**

Substantially more than 50 but less than 150.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See Attachment A.

**(b) Facts and evidence relied upon in support of these claims:**

See Attachment A.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See Attachment A.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

See Attachment A.

(b) Facts and evidence relevant to these detriments:

See Attachment A.

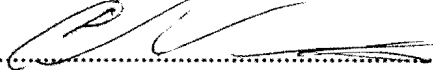
7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Cheryl Karen Valneris of Mailbox 7, 433 Somerville Road, Tottenham, Victoria 3012

Dated..... 21st June 2011 .....

Signed by/on behalf of the applicant

.....  .....

(Signature)

..... CHERYL KAREN VALNERIS .....

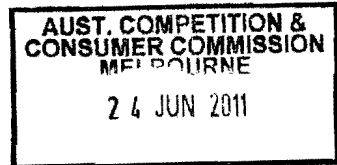
(Full Name)

..... VICTORIAN CONTAINER MANAGEMENT PLC .....

(Organisation)

..... DIRECTOR .....

(Position in Organisation)



## Attachment A

Submission by **VICTORIAN CONTAINER MANAGEMENT PTY LTD** ("*Applicant*") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at 433A Somerville Road, Tottenham, Victoria 3012.
- (b) Containerchain Pty Ltd ("*Containerchain*") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

## **2. Markets and Competition.**

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

## **3. Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
- (e) Truck queues are unpredictable, leading to congestion and delays.
- (f) Forward planning by all stakeholders is compromised under the present system.
- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

- (a) makes the industry more efficient;
- (b) allows for the management of truck queues and traffic management around empty container parks;
- (c) alleviates driver fatigue by reducing waiting periods;
- (d) reduces congestion and delays by making queues and delivery and pick up times predictable;
- (e) allows stakeholders in the industry to forward plan with confidence;
- (f) ensures that transport operators do not arrive at an empty container park when it is closed;
- (g) allows empty container parks to manage human and other resources efficiently.

The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

The system will also have the benefits of allowing for paperless transactions, full visibility to all stakeholders of relevant information such as turn around times, release status, container availability and the online recording of damage and demurrage function.

#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).

## TERMS OF USE

These terms of use relate to the website "<http://www.containerchain.com>" (the **Website**) and are to be read as part of the Carrier Access Arrangements for access to the empty container park which You are proposing to contract with (in these terms referred to as "We", "Our" or "Us"). Your use of the Website, the online empty container notification software (**Software**) on the Website and any information, materials and services provided on the Website is subject to the terms and conditions set out in these Terms of Use.

### Access Arrangements

- A. Containerchain Pty Ltd (**Containerchain**) is the operator of the Website which We use to provide You with the means to notify Us of an intention to pick up from or deliver to Us an empty container.
- B. Containerchain is also our agent for the invoicing and collection of Container Fees.

You must read and accept these Terms of Use before utilising the Software. By accepting these Terms of Use you are also accepting the terms of our Carrier Access Arrangements.

### 1. NOTIFICATION

- 1.1 The Website allows you to notify your intention to deliver or pick up empty containers from Us (**Services**).
- 1.2 You can notify your intention to arrive using the Software by logging on to your account and carrying out a transaction. You must ensure the information you submit for Your transaction is accurate, current and complete.
- 1.3 Your transaction will be confirmed by the provision of a notification number once You have saved Your notification in the Software. By saving the notification, You agree to comply with the terms of and observe that notification and Our Carrier Access Arrangements.
- 1.4 You acknowledge and agree that We may, in Our sole discretion, suspend or terminate the provision of the Services at any time.

### 2. ACCOUNT

- 2.1 Using the Website, you must first register your details (including, without limitation, your billing details) and an account will be set up for You.
- 2.2 You must not register multiple accounts.

- 2.3 You agree to provide accurate, current and complete information in order to establish an account. You agree to maintain and update your details when those details change. Your right to use the Services may be terminated or the system might not accept Your notification if any of the information you provide is false, inaccurate or incomplete. You agree that your registration details for use in maintaining your account and billing you will be stored in accordance with clause 5 of these Terms of Use.
- 2.4 Once an account has been established for You, You will be provided with an "Account ID", a "User ID" and a password (**Your Account Information**). Your Account Information is confidential and it is your responsibility to maintain its security and confidentiality. You must not permit your account to be used by any other person. You agree that you will be responsible for any unauthorised activity that occurs under your account as a result of your failure to keep Your Account Information confidential and secure.
- 2.5 You agree to notify Us immediately via the website of any unauthorised use of your account or Your Account Information or any other breach of security of your account. In that event, we or Containerchain on our behalf may, in our absolute discretion, suspend, terminate and/or establish a new account for You.

### **3. CONTAINER FEES**

- 3.1 You agree to pay the Container Fees (plus all taxes applicable to those Container Fees) for all notifications you make using the software.
- 3.2 Container Fees will be invoiced on Our behalf by Containerchain on our behalf on a weekly basis.
- 3.3 Invoices will be sent to the nominated email address in your Account.
- 3.4 You must settle invoices in full within fourteen days from the date of invoice by making payment to Containerchain.
- 3.5 You agree that all Container Fees and taxes payable by you in accordance with these Terms of Use will be paid in Australian dollars (AUD\$).
- 3.6 You must ensure that your billing details, are valid.

### **4. USE OF WEBSITE**

You must use the Website only for the purposes set out in these Terms of Use and must not use the Website:

- (a) in breach of any applicable laws or regulations or otherwise for any unlawful or improper purpose;



- (b) in a way which causes, or is likely to cause injury or damage to the Website and/or Software;
- (c) in a way which, or might reasonably be expected to, interferes with, disrupts or creates an undue burden on the Website and/or Software; or
- (d) to encourage or procure the performance of any illegal activity by a third party.

## **5. PRIVACY**

The collection of the private information of individuals is subject to the Privacy Policy on the Website.

## **6. INTELLECTUAL PROPERTY**

You acknowledge and agree that the Website, including the user interface and scripts and Software, contains proprietary information and material that is owned by Containerchain and/or its licensors. You agree not to use such proprietary information or materials in any way except in accordance with these Terms of Use and that you do not have any right, title or interest in or to such proprietary information.

## **7. TAXES**

- 7.1 Unless otherwise stated, fees and charges for any goods or services supplied (or offered for supply) under these Terms of Use are stated exclusive of GST. Where GST applies to any supply made to you, Containerchain will issue you with a Tax Invoice.
- 7.2 All defined terms in this clause 7 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **8. WARRANTIES AND LIMITATION OF LIABILITY**

- 8.1 Your use of the Website, Services and the Software is at your sole risk.
- 8.2 We do not make any representation or warranty that any information or material provided or displayed on the Website will be reliable, accurate or complete and neither we nor Containerchain accept any responsibility arising in any way from any error or omission in or from information or material on the Website.
- 8.3 To the extent permitted by law, all conditions and warranties (whether express, implied or statutory) relating to your use of the Website or the Software are excluded.
- 8.4 To the extent that liability for breach of any implied warranty, term, condition or consumer guarantee cannot be excluded by law, liability for breach of that implied warranty, term, condition or consumer guarantee will be limited, at Our sole discretion, to any one or more of the following:

- (a) the supplying of the Services giving rise to the liability again; or
- (b) the payment of the cost of having those Services supplied again.

8.5 In relation to any express warranty, term or condition set out in these Terms of Use in connection with Services supplied or offered by Us, Our liability to you is limited to any amount paid by you (if any) in respect of those Services.

8.6 To the extent permitted by law, neither We nor Containerchain will be liable (whether in contract, tort or on any other basis in law or in equity) for any personal injury or any incidental, special, indirect or consequential loss or damage whatsoever, including damages for loss of profits, loss of data and business interruption arising out of or related to the use of, or inability to use, the Website and/or the Software.

## 9. **SUSPENSION AND TERMINATION**

9.1 We have given Containerchain the right, in its sole discretion, to suspend or terminate your account or access to your account, if Containerchain believes:

- (a) you have breached these Terms of Use; or
- (b) circumstances exist beyond its reasonable control, including acts of any government or administrative body, war, insurrection, sabotage, embargo, fire, flood, strike or other industrial action, unavailability or interruption or delay in telecommunication services or third party services (**Force Majeure Event**) which prevent it from carrying out its obligations in accordance with these Terms of Use.

9.2 Without limiting clause 8, neither We nor Containerchain will be responsible for any failure or delay in delivery of the Services where such failure is directly or indirectly caused by any of the following

- (a) a Force Majeure Event;
- (b) the failure of your internet connection;
- (c) a domain name system issue beyond our direct control including, without limitation, the introduction of a computer virus, hacking into the Website by third parties and other forms of electronic sabotage; or
- (d) any breach of these Terms of Use by You.

## 10. **GENERAL**

10.1 You acknowledge and agree that Containerchain on Our behalf may, from time to time, update, vary or amend these Terms of Use. If Containerchain updates, varies or

amends these Terms of Use it will publish the updated, varied or amended Terms of Use on the Website and you agree to be bound by those Terms of Use.

- 10.2 Any provision of these Terms of Use which is prohibited or unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make these Terms of Use enforceable. Any such severability does not invalidate the remaining provisions of these Terms of Use nor affect the validity or enforceability of that provision in any other jurisdiction.
- 10.3 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 10.4 These Terms of Use are governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

# Form G

Commonwealth of Australia

Competition and Consumer Act 2010 -- subsection 93 (1)

## NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the Competition and Consumer Act 2010, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

### 1. Applicant

N95451 (a) Name of person giving notice: Ocean & Air Cargo Services PTY LTD

Trading As: Oceania Container Services

### (b) Short description of business carried on by that person:

The management and operation of an empty container park.

### (c) Address in Australia for service of documents on that person:

79-85 Pipe Road, Laverton North, Victoria, 3026

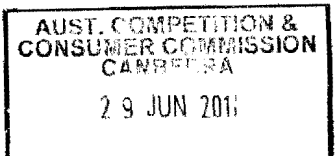
### 2. Notified arrangement

### (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The management of container movements to and from the Applicant's container park.

### (b) Description of the conduct or proposed conduct:

If a transport company wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport company must pre-



book space via the nominate website which will include the transport company accepting the Applicant's Terms of Use (copy attached).

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

The Victorian transport and logistics industry, including container transport services operators.

**(b) Number of those persons:**

**(i) At present time:**

None at present

**(ii) Estimated within the next year:**

Substantially more than 50 but less than 150.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See Attachment A.

**(b) Facts and evidence relied upon in support of these claims:**

See Attachment A.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See Attachment A.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the**

goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

See Attachment A.

(b) Facts and evidence relevant to these detriments:

See Attachment A.

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Mick Stanic of PO Box 291, Laverton, Victoria 3028

Dated 23 June 2011

Signed by/on behalf of the applicant

[Handwritten signature]

(Signature)

MICK STANIC

(Full Name)

OCEAN + AIR CARGO SERVICES PTY LTD

(Organisation)

DEPOT MANAGER

(Position in Organisation)

## Attachment A

Submission by OCEAN & AIR CARGO SERVICES PTY LTD TRADING AS OCEANIA CONTAINER SERVICES ("*Applicant*") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at 79-85 Pipe Road, Laverton North, Victoria 3026.
- (b) Containerchain Pty Ltd ("*Containerchain*") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

## **2. Markets and Competition.**

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

## **3. Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address



their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
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- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

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The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

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#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).



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(a) Name of person giving notice:

N95452

**RAFTNET PTY LTD TRADING AS CONTAINER LOGISTICS**

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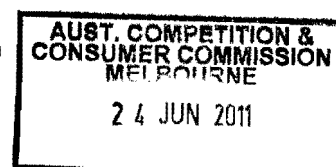
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(b) **Facts and evidence relevant to these detriments:**

See Attachment A.

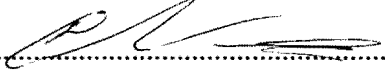
7. **Further information**

(a) **Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Cheryl Karen Valneris of PO Box 781, Sunshine, Victoria 3020

Dated.....21st JUNE 2011.....

Signed by/on behalf of the applicant

..........

(Signature)

.....CHERYL KAREN VALNERIS.....

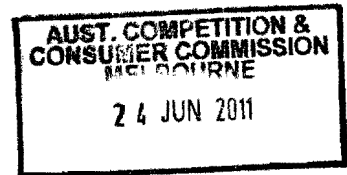
(Full Name)

.....RAFTNET P/L TRADING AS CONTAINER LOGISTICS.....

(Organisation)

.....DIRECTOR.....

(Position in Organisation)



## Attachment A

Submission by **RAFTNET PTY LTD T/AS CONTAINER LOGISTICS** ("*Applicant*") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at 433B Somerville Road, Tottenham, Victoria 3012.
- (b) Containerchain Pty Ltd ("*Containerchain*") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

## **2. Markets and Competition.**

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

## **3. Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
- (e) Truck queues are unpredictable, leading to congestion and delays.
- (f) Forward planning by all stakeholders is compromised under the present system.
- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

- (a) makes the industry more efficient;
- (b) allows for the management of truck queues and traffic management around empty container parks;
- (c) alleviates driver fatigue by reducing waiting periods;
- (d) reduces congestion and delays by making queues and delivery and pick up times predictable;
- (e) allows stakeholders in the industry to forward plan with confidence;
- (f) ensures that transport operators do not arrive at an empty container park when it is closed;
- (g) allows empty container parks to manage human and other resources efficiently.

The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

The system will also have the benefits of allowing for paperless transactions, full visibility to all stakeholders of relevant information such as turn around times, release status, container availability and the online recording of damage and demurrage function.

#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).



## TERMS OF USE

These terms of use relate to the website "<http://www.containerchain.com>" (the **Website**) and are to be read as part of the Carrier Access Arrangements for access to the empty container park which You are proposing to contract with (in these terms referred to as "We", "Our" or "Us"). Your use of the Website, the online empty container notification software (**Software**) on the Website and any information, materials and services provided on the Website is subject to the terms and conditions set out in these Terms of Use.

### Access Arrangements

- A. Containerchain Pty Ltd (**Containerchain**) is the operator of the Website which We use to provide You with the means to notify Us of an intention to pick up from or deliver to Us an empty container.
- B. Containerchain is also our agent for the invoicing and collection of Container Fees.

You must read and accept these Terms of Use before utilising the Software. By accepting these Terms of Use you are also accepting the terms of our Carrier Access Arrangements.

### 1. NOTIFICATION

- 1.1 The Website allows you to notify your intention to deliver or pick up empty containers from Us (**Services**).
- 1.2 You can notify your intention to arrive using the Software by logging on to your account and carrying out a transaction. You must ensure the information you submit for Your transaction is accurate, current and complete.
- 1.3 Your transaction will be confirmed by the provision of a notification number once You have saved Your notification in the Software. By saving the notification, You agree to comply with the terms of and observe that notification and Our Carrier Access Arrangements.
- 1.4 You acknowledge and agree that We may, in Our sole discretion, suspend or terminate the provision of the Services at any time.

### 2. ACCOUNT

- 2.1 Using the Website, you must first register your details (including, without limitation, your billing details) and an account will be set up for You.
- 2.2 You must not register multiple accounts.

- 2.3 You agree to provide accurate, current and complete information in order to establish an account. You agree to maintain and update your details when those details change. Your right to use the Services may be terminated or the system might not accept Your notification if any of the information you provide is false, inaccurate or incomplete. You agree that your registration details for use in maintaining your account and billing you will be stored in accordance with clause 5 of these Terms of Use.
- 2.4 Once an account has been established for You, You will be provided with an "Account ID", a "User ID" and a password (**Your Account Information**). Your Account Information is confidential and it is your responsibility to maintain its security and confidentiality. You must not permit your account to be used by any other person. You agree that you will be responsible for any unauthorised activity that occurs under your account as a result of your failure to keep Your Account Information confidential and secure.
- 2.5 You agree to notify Us immediately via the website of any unauthorised use of your account or Your Account Information or any other breach of security of your account. In that event, we or Containerchain on our behalf may, in our absolute discretion, suspend, terminate and/or establish a new account for You.

### **3. CONTAINER FEES**

- 3.1 You agree to pay the Container Fees (plus all taxes applicable to those Container Fees) for all notifications you make using the software.
- 3.2 Container Fees will be invoiced on Our behalf by Containerchain on our behalf on a weekly basis.
- 3.3 Invoices will be sent to the nominated email address in your Account.
- 3.4 You must settle invoices in full within fourteen days from the date of invoice by making payment to Containerchain.
- 3.5 You agree that all Container Fees and taxes payable by you in accordance with these Terms of Use will be paid in Australian dollars (AUD\$).
- 3.6 You must ensure that your billing details, are valid.

### **4. USE OF WEBSITE**

You must use the Website only for the purposes set out in these Terms of Use and must not use the Website:

- (a) in breach of any applicable laws or regulations or otherwise for any unlawful or improper purpose;

- (b) in a way which causes, or is likely to cause injury or damage to the Website and/or Software;
- (c) in a way which, or might reasonably be expected to, interferes with, disrupts or creates an undue burden on the Website and/or Software; or
- (d) to encourage or procure the performance of any illegal activity by a third party.

## **5. PRIVACY**

The collection of the private information of individuals is subject to the Privacy Policy on the Website.

## **6. INTELLECTUAL PROPERTY**

You acknowledge and agree that the Website, including the user interface and scripts and Software, contains proprietary information and material that is owned by Containerchain and/or its licensors. You agree not to use such proprietary information or materials in any way except in accordance with these Terms of Use and that you do not have any right, title or interest in or to such proprietary information.

## **7. TAXES**

- 7.1 Unless otherwise stated, fees and charges for any goods or services supplied (or offered for supply) under these Terms of Use are stated exclusive of GST. Where GST applies to any supply made to you, Containerchain will issue you with a Tax Invoice.
- 7.2 All defined terms in this clause 7 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **8. WARRANTIES AND LIMITATION OF LIABILITY**

- 8.1 Your use of the Website, Services and the Software is at your sole risk.
- 8.2 We do not make any representation or warranty that any information or material provided or displayed on the Website will be reliable, accurate or complete and neither we nor Containerchain accept any responsibility arising in any way from any error or omission in or from information or material on the Website.
- 8.3 To the extent permitted by law, all conditions and warranties (whether express, implied or statutory) relating to your use of the Website or the Software are excluded.
- 8.4 To the extent that liability for breach of any implied warranty, term, condition or consumer guarantee cannot be excluded by law, liability for breach of that implied warranty, term, condition or consumer guarantee will be limited, at Our sole discretion, to any one or more of the following:

- (a) the supplying of the Services giving rise to the liability again; or
- (b) the payment of the cost of having those Services supplied again.

8.5 In relation to any express warranty, term or condition set out in these Terms of Use in connection with Services supplied or offered by Us, Our liability to you is limited to any amount paid by you (if any) in respect of those Services.

8.6 To the extent permitted by law, neither We nor Containerchain will be liable (whether in contract, tort or on any other basis in law or in equity) for any personal injury or any incidental, special, indirect or consequential loss or damage whatsoever, including damages for loss of profits, loss of data and business interruption arising out of or related to the use of, or inability to use, the Website and/or the Software.

## 9. **SUSPENSION AND TERMINATION**

9.1 We have given Containerchain the right, in its sole discretion, to suspend or terminate your account or access to your account, if Containerchain believes:

- (a) you have breached these Terms of Use; or
- (b) circumstances exist beyond its reasonable control, including acts of any government or administrative body, war, insurrection, sabotage, embargo, fire, flood, strike or other industrial action, unavailability or interruption or delay in telecommunication services or third party services (**Force Majeure Event**) which prevent it from carrying out its obligations in accordance with these Terms of Use.

9.2 Without limiting clause 8, neither We nor Containerchain will be responsible for any failure or delay in delivery of the Services where such failure is directly or indirectly caused by any of the following

- (a) a Force Majeure Event;
- (b) the failure of your internet connection;
- (c) a domain name system issue beyond our direct control including, without limitation, the introduction of a computer virus, hacking into the Website by third parties and other forms of electronic sabotage; or
- (d) any breach of these Terms of Use by You.

## 10. **GENERAL**

10.1 You acknowledge and agree that Containerchain on Our behalf may, from time to time, update, vary or amend these Terms of Use. If Containerchain updates, varies or

amends these Terms of Use it will publish the updated, varied or amended Terms of Use on the Website and you agree to be bound by those Terms of Use.

- 10.2 Any provision of these Terms of Use which is prohibited or unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make these Terms of Use enforceable. Any such severability does not invalidate the remaining provisions of these Terms of Use nor affect the validity or enforceability of that provision in any other jurisdiction.
- 10.3 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 10.4 These Terms of Use are governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

FILE No:
DOC:
MARS/PRISM:

**Form G**

Commonwealth of Australia

Competition and Consumer Act 2010 -- subsection 93 (1)

**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the Competition and Consumer Act 2010 , of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

**1. Applicant**

(a) **Name of person giving notice:**

N95453 **CHALMERS INDUSTRIES PTY LTD**

(b) **Short description of business carried on by that person:**

The management and operation of an empty container park.

(c) **Address in Australia for service of documents on that person:**

Corner Francis Street and Hardie Road, Brooklyn, Victoria 3012

**2. Notified arrangement**

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

The management of container movements to and from the Applicant's container park.

(b) **Description of the conduct or proposed conduct:**

If a transport company wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport company must pre-book space via the nominate website which will include the transport company accepting the Applicant's **Terms of Use** (copy attached).



**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

The Victorian transport and logistics industry, including container transport services operators.

**(b) Number of those persons:**

**(i) At present time:**

None at present

**(ii) Estimated within the next year:**

Substantially more than 50 but less than 150.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See Attachment A.

**(b) Facts and evidence relied upon in support of these claims:**

See Attachment A.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See Attachment A.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

See Attachment A.

(b) Facts and evidence relevant to these detriments:

See Attachment A.

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Gary Chalmers of PO Box 50, Yarraville, Victoria 3013 9314 1244

Dated..... JUNE 22 2011 .....

Signed by/on behalf of the applicant

..... *G. Chalmers* .....

(Signature)

..... GARY WILLIAM CHALMERS .....

(Full Name)

..... CHALMERS INDUSTRIES Pty LTD .....

(Organisation)

..... DIRECTOR .....

(Position in Organisation)





## Attachment A

Submission by **CHALMERS INDUSTRIES PTY LTD** ("*Applicant*") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at Corner Francis Street and Hardie Road, Brooklyn, Victoria 3012.
- (b) Containerchain Pty Ltd ("*Containerchain*") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

## 2. **Markets and Competition.**

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

## 3. **Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
- (e) Truck queues are unpredictable, leading to congestion and delays.
- (f) Forward planning by all stakeholders is compromised under the present system.
- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

- (a) makes the industry more efficient;
- (b) allows for the management of truck queues and traffic management around empty container parks;
- (c) alleviates driver fatigue by reducing waiting periods;
- (d) reduces congestion and delays by making queues and delivery and pick up times predictable;
- (e) allows stakeholders in the industry to forward plan with confidence;
- (f) ensures that transport operators do not arrive at an empty container park when it is closed;
- (g) allows empty container parks to manage human and other resources efficiently.

The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

The system will also have the benefits of allowing for paperless transactions, full visibility to all stakeholders of relevant information such as turn around times, release status, container availability and the online recording of damage and demurrage function.

#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).

## TERMS OF USE

These terms of use relate to the website "<http://www.containerchain.com>" (the **Website**) and are to be read as part of the Carrier Access Arrangements for access to the empty container park which You are proposing to contract with (in these terms referred to as "We", "Our" or "Us"). Your use of the Website, the online empty container notification software (**Software**) on the Website and any information, materials and services provided on the Website is subject to the terms and conditions set out in these Terms of Use.

### Access Arrangements

- A. Containerchain Pty Ltd (**Containerchain**) is the operator of the Website which We use to provide You with the means to notify Us of an intention to pick up from or deliver to Us an empty container.
- B. Containerchain is also our agent for the invoicing and collection of Container Fees.

You must read and accept these Terms of Use before utilising the Software. By accepting these Terms of Use you are also accepting the terms of our Carrier Access Arrangements.

### 1. NOTIFICATION

- 1.1 The Website allows you to notify your intention to deliver or pick up empty containers from Us (**Services**).
- 1.2 You can notify your intention to arrive using the Software by logging on to your account and carrying out a transaction. You must ensure the information you submit for Your transaction is accurate, current and complete.
- 1.3 Your transaction will be confirmed by the provision of a notification number once You have saved Your notification in the Software. By saving the notification, You agree to comply with the terms of and observe that notification and Our Carrier Access Arrangements.
- 1.4 You acknowledge and agree that We may, in Our sole discretion, suspend or terminate the provision of the Services at any time.

### 2. ACCOUNT

- 2.1 Using the Website, you must first register your details (including, without limitation, your billing details) and an account will be set up for You.
- 2.2 You must not register multiple accounts.

- 2.3 You agree to provide accurate, current and complete information in order to establish an account. You agree to maintain and update your details when those details change. Your right to use the Services may be terminated or the system might not accept Your notification if any of the information you provide is false, inaccurate or incomplete. You agree that your registration details for use in maintaining your account and billing you will be stored in accordance with clause 5 of these Terms of Use.
- 2.4 Once an account has been established for You, You will be provided with an "Account ID", a "User ID" and a password (**Your Account Information**). Your Account Information is confidential and it is your responsibility to maintain its security and confidentiality. You must not permit your account to be used by any other person. You agree that you will be responsible for any unauthorised activity that occurs under your account as a result of your failure to keep Your Account Information confidential and secure.
- 2.5 You agree to notify Us immediately via the website of any unauthorised use of your account or Your Account Information or any other breach of security of your account. In that event, we or Containerchain on our behalf may, in our absolute discretion, suspend, terminate and/or establish a new account for You.

### **3. CONTAINER FEES**

- 3.1 You agree to pay the Container Fees (plus all taxes applicable to those Container Fees) for all notifications you make using the software.
- 3.2 Container Fees will be invoiced on Our behalf by Containerchain on our behalf on a weekly basis.
- 3.3 Invoices will be sent to the nominated email address in your Account.
- 3.4 You must settle invoices in full within fourteen days from the date of invoice by making payment to Containerchain.
- 3.5 You agree that all Container Fees and taxes payable by you in accordance with these Terms of Use will be paid in Australian dollars (AUD\$).
- 3.6 You must ensure that your billing details, are valid.

### **4. USE OF WEBSITE**

You must use the Website only for the purposes set out in these Terms of Use and must not use the Website:

- (a) in breach of any applicable laws or regulations or otherwise for any unlawful or improper purpose;

- (b) in a way which causes, or is likely to cause injury or damage to the Website and/or Software;
- (c) in a way which, or might reasonably be expected to, interferes with, disrupts or creates an undue burden on the Website and/or Software; or
- (d) to encourage or procure the performance of any illegal activity by a third party.

## **5. PRIVACY**

The collection of the private information of individuals is subject to the Privacy Policy on the Website.

## **6. INTELLECTUAL PROPERTY**

You acknowledge and agree that the Website, including the user interface and scripts and Software, contains proprietary information and material that is owned by Containerchain and/or its licensors. You agree not to use such proprietary information or materials in any way except in accordance with these Terms of Use and that you do not have any right, title or interest in or to such proprietary information.

## **7. TAXES**

- 7.1 Unless otherwise stated, fees and charges for any goods or services supplied (or offered for supply) under these Terms of Use are stated exclusive of GST. Where GST applies to any supply made to you, Containerchain will issue you with a Tax Invoice.
- 7.2 All defined terms in this clause 7 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **8. WARRANTIES AND LIMITATION OF LIABILITY**

- 8.1 Your use of the Website, Services and the Software is at your sole risk.
- 8.2 We do not make any representation or warranty that any information or material provided or displayed on the Website will be reliable, accurate or complete and neither we nor Containerchain accept any responsibility arising in any way from any error or omission in or from information or material on the Website.
- 8.3 To the extent permitted by law, all conditions and warranties (whether express, implied or statutory) relating to your use of the Website or the Software are excluded.
- 8.4 To the extent that liability for breach of any implied warranty, term, condition or consumer guarantee cannot be excluded by law, liability for breach of that implied warranty, term, condition or consumer guarantee will be limited, at Our sole discretion, to any one or more of the following:

- (a) the supplying of the Services giving rise to the liability again; or
- (b) the payment of the cost of having those Services supplied again.

8.5 In relation to any express warranty, term or condition set out in these Terms of Use in connection with Services supplied or offered by Us, Our liability to you is limited to any amount paid by you (if any) in respect of those Services.

8.6 To the extent permitted by law, neither We nor Containerchain will be liable (whether in contract, tort or on any other basis in law or in equity) for any personal injury or any incidental, special, indirect or consequential loss or damage whatsoever, including damages for loss of profits, loss of data and business interruption arising out of or related to the use of, or inability to use, the Website and/or the Software.

## 9. **SUSPENSION AND TERMINATION**

9.1 We have given Containerchain the right, in its sole discretion, to suspend or terminate your account or access to your account, if Containerchain believes:

- (a) you have breached these Terms of Use; or
- (b) circumstances exist beyond its reasonable control, including acts of any government or administrative body, war, insurrection, sabotage, embargo, fire, flood, strike or other industrial action, unavailability or interruption or delay in telecommunication services or third party services (**Force Majeure Event**) which prevent it from carrying out its obligations in accordance with these Terms of Use.

9.2 Without limiting clause 8, neither We nor Containerchain will be responsible for any failure or delay in delivery of the Services where such failure is directly or indirectly caused by any of the following

- (a) a Force Majeure Event;
- (b) the failure of your internet connection;
- (c) a domain name system issue beyond our direct control including, without limitation, the introduction of a computer virus, hacking into the Website by third parties and other forms of electronic sabotage; or
- (d) any breach of these Terms of Use by You.

## 10. **GENERAL**

10.1 You acknowledge and agree that Containerchain on Our behalf may, from time to time, update, vary or amend these Terms of Use. If Containerchain updates, varies or

amends these Terms of Use it will publish the updated, varied or amended Terms of Use on the Website and you agree to be bound by those Terms of Use.

- 10.2 Any provision of these Terms of Use which is prohibited or unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make these Terms of Use enforceable. Any such severability does not invalidate the remaining provisions of these Terms of Use nor affect the validity or enforceability of that provision in any other jurisdiction.
- 10.3 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 10.4 These Terms of Use are governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.



FILE No:
DOC:
MARS/PRISM:

## Form G

Commonwealth of Australia

Competition and Consumer Act 2010 -- subsection 93 (1)

### NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the Competition and Consumer Act 2010, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

**1. Applicant**

**(a) Name of person giving notice:**

N95454      **ALLIED CONTAINER SERVICES**

**(b) Short description of business carried on by that person:**

The management and operation of an empty container park.

**(c) Address in Australia for service of documents on that person:**

Lot 102, Olympia Street, Tottenham, Victoria 3012

**2. Notified arrangement**

**(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

The management of container movements to and from the Applicant's container park.

**(b) Description of the conduct or proposed conduct:**

If a transport company wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport company must pre-book space via the nominate website which will include the transport company accepting the Applicant's **Terms of Use** (copy attached).

<b>AUST. COMPETITION &amp; CONSUMER COMMISSION</b> MELBOURNE 24 JUN 2011
--

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

The Victorian transport and logistics industry, including container transport services operators.

**(b) Number of those persons:**

**(i) At present time:**

None at present

**(ii) Estimated within the next year:**

Substantially more than 50 but less than 150.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See Attachment A.

**(b) Facts and evidence relied upon in support of these claims:**

See Attachment A.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See Attachment A.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

See Attachment A.

(b) Facts and evidence relevant to these detriments:

See Attachment A.

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Rose Toth of PO Box 537, Altona North, Victoria 3025

Dated..... 23 / 6 / 2011 .....

Signed by/on behalf of the applicant

..... *Rose Toth* .....

(Signature)

..... ROSE TOTH .....

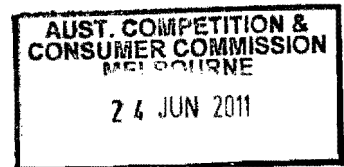
(Full Name)

..... ALLIED CONTAINER SERVICES P/L .....

(Organisation)

..... ADMINISTRATION MANAGER .....

(Position in Organisation)



## Attachment A

Submission by **ALLIED CONTAINER SERVICES** ("*Applicant*") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at Lot 102, Olympia Street, Tottenham, Victoria 3012.
- (b) Containerchain Pty Ltd ("*Containerchain*") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

### 2. Markets and Competition.

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

### **3. Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
- (e) Truck queues are unpredictable, leading to congestion and delays.
- (f) Forward planning by all stakeholders is compromised under the present system.
- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

- (a) makes the industry more efficient;
- (b) allows for the management of truck queues and traffic management around empty container parks;
- (c) alleviates driver fatigue by reducing waiting periods;
- (d) reduces congestion and delays by making queues and delivery and pick up times predictable;
- (e) allows stakeholders in the industry to forward plan with confidence;
- (f) ensures that transport operators do not arrive at an empty container park when it is closed;
- (g) allows empty container parks to manage human and other resources efficiently.

The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

The system will also have the benefits of allowing for paperless transactions, full visibility to all stakeholders of relevant information such as turn around times, release status, container availability and the online recording of damage and demurrage function.

#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).

## TERMS OF USE

These terms of use relate to the website "<http://www.containerchain.com>" (the **Website**) and are to be read as part of the Carrier Access Arrangements for access to the empty container park which You are proposing to contract with (in these terms referred to as "We", "Our" or "Us"). Your use of the Website, the online empty container notification software (**Software**) on the Website and any information, materials and services provided on the Website is subject to the terms and conditions set out in these Terms of Use.

### Access Arrangements

- A. Containerchain Pty Ltd (**Containerchain**) is the operator of the Website which We use to provide You with the means to notify Us of an intention to pick up from or deliver to Us an empty container.
- B. Containerchain is also our agent for the invoicing and collection of Container Fees.

You must read and accept these Terms of Use before utilising the Software. By accepting these Terms of Use you are also accepting the terms of our Carrier Access Arrangements.

### 1. NOTIFICATION

- 1.1 The Website allows you to notify your intention to deliver or pick up empty containers from Us (**Services**).
- 1.2 You can notify your intention to arrive using the Software by logging on to your account and carrying out a transaction. You must ensure the information you submit for Your transaction is accurate, current and complete.
- 1.3 Your transaction will be confirmed by the provision of a notification number once You have saved Your notification in the Software. By saving the notification, You agree to comply with the terms of and observe that notification and Our Carrier Access Arrangements.
- 1.4 You acknowledge and agree that We may, in Our sole discretion, suspend or terminate the provision of the Services at any time.

### 2. ACCOUNT

- 2.1 Using the Website, you must first register your details (including, without limitation, your billing details) and an account will be set up for You.
- 2.2 You must not register multiple accounts.

- 2.3 You agree to provide accurate, current and complete information in order to establish an account. You agree to maintain and update your details when those details change. Your right to use the Services may be terminated or the system might not accept Your notification if any of the information you provide is false, inaccurate or incomplete. You agree that your registration details for use in maintaining your account and billing you will be stored in accordance with clause 5 of these Terms of Use.
- 2.4 Once an account has been established for You, You will be provided with an "Account ID", a "User ID" and a password (**Your Account Information**). Your Account Information is confidential and it is your responsibility to maintain its security and confidentiality. You must not permit your account to be used by any other person. You agree that you will be responsible for any unauthorised activity that occurs under your account as a result of your failure to keep Your Account Information confidential and secure.
- 2.5 You agree to notify Us immediately via the website of any unauthorised use of your account or Your Account Information or any other breach of security of your account. In that event, we or Containerchain on our behalf may, in our absolute discretion, suspend, terminate and/or establish a new account for You.

### **3. CONTAINER FEES**

- 3.1 You agree to pay the Container Fees (plus all taxes applicable to those Container Fees) for all notifications you make using the software.
- 3.2 Container Fees will be invoiced on Our behalf by Containerchain on our behalf on a weekly basis.
- 3.3 Invoices will be sent to the nominated email address in your Account.
- 3.4 You must settle invoices in full within fourteen days from the date of invoice by making payment to Containerchain.
- 3.5 You agree that all Container Fees and taxes payable by you in accordance with these Terms of Use will be paid in Australian dollars (AUD\$).
- 3.6 You must ensure that your billing details, are valid.

### **4. USE OF WEBSITE**

You must use the Website only for the purposes set out in these Terms of Use and must not use the Website:

- (a) in breach of any applicable laws or regulations or otherwise for any unlawful or improper purpose;



- (b) in a way which causes, or is likely to cause injury or damage to the Website and/or Software;
- (c) in a way which, or might reasonably be expected to, interferes with, disrupts or creates an undue burden on the Website and/or Software; or
- (d) to encourage or procure the performance of any illegal activity by a third party.

## **5. PRIVACY**

The collection of the private information of individuals is subject to the Privacy Policy on the Website.

## **6. INTELLECTUAL PROPERTY**

You acknowledge and agree that the Website, including the user interface and scripts and Software, contains proprietary information and material that is owned by Containerchain and/or its licensors. You agree not to use such proprietary information or materials in any way except in accordance with these Terms of Use and that you do not have any right, title or interest in or to such proprietary information.

## **7. TAXES**

- 7.1 Unless otherwise stated, fees and charges for any goods or services supplied (or offered for supply) under these Terms of Use are stated exclusive of GST. Where GST applies to any supply made to you, Containerchain will issue you with a Tax Invoice.
- 7.2 All defined terms in this clause 7 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **8. WARRANTIES AND LIMITATION OF LIABILITY**

- 8.1 Your use of the Website, Services and the Software is at your sole risk.
- 8.2 We do not make any representation or warranty that any information or material provided or displayed on the Website will be reliable, accurate or complete and neither we nor Containerchain accept any responsibility arising in any way from any error or omission in or from information or material on the Website.
- 8.3 To the extent permitted by law, all conditions and warranties (whether express, implied or statutory) relating to your use of the Website or the Software are excluded.
- 8.4 To the extent that liability for breach of any implied warranty, term, condition or consumer guarantee cannot be excluded by law, liability for breach of that implied warranty, term, condition or consumer guarantee will be limited, at Our sole discretion, to any one or more of the following:

- (a) the supplying of the Services giving rise to the liability again; or
- (b) the payment of the cost of having those Services supplied again.

8.5 In relation to any express warranty, term or condition set out in these Terms of Use in connection with Services supplied or offered by Us, Our liability to you is limited to any amount paid by you (if any) in respect of those Services.

8.6 To the extent permitted by law, neither We nor Containerchain will be liable (whether in contract, tort or on any other basis in law or in equity) for any personal injury or any incidental, special, indirect or consequential loss or damage whatsoever, including damages for loss of profits, loss of data and business interruption arising out of or related to the use of, or inability to use, the Website and/or the Software.

## 9. **SUSPENSION AND TERMINATION**

9.1 We have given Containerchain the right, in its sole discretion, to suspend or terminate your account or access to your account, if Containerchain believes:

- (a) you have breached these Terms of Use; or
- (b) circumstances exist beyond its reasonable control, including acts of any government or administrative body, war, insurrection, sabotage, embargo, fire, flood, strike or other industrial action, unavailability or interruption or delay in telecommunication services or third party services (**Force Majeure Event**) which prevent it from carrying out its obligations in accordance with these Terms of Use.

9.2 Without limiting clause 8, neither We nor Containerchain will be responsible for any failure or delay in delivery of the Services where such failure is directly or indirectly caused by any of the following

- (a) a Force Majeure Event;
- (b) the failure of your internet connection;
- (c) a domain name system issue beyond our direct control including, without limitation, the introduction of a computer virus, hacking into the Website by third parties and other forms of electronic sabotage; or
- (d) any breach of these Terms of Use by You.

## 10. **GENERAL**

10.1 You acknowledge and agree that Containerchain on Our behalf may, from time to time, update, vary or amend these Terms of Use. If Containerchain updates, varies or

amends these Terms of Use it will publish the updated, varied or amended Terms of Use on the Website and you agree to be bound by those Terms of Use.

- 10.2 Any provision of these Terms of Use which is prohibited or unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make these Terms of Use enforceable. Any such severability does not invalidate the remaining provisions of these Terms of Use nor affect the validity or enforceability of that provision in any other jurisdiction.
- 10.3 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 10.4 These Terms of Use are governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

FILE NO

DOC:

MARS/PRISM:

## Form G

Commonwealth of Australia

Competition and Consumer Act 2010 -- subsection 93 (1)

### NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the Competition and Consumer Act 2010, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

#### 1. Applicant

(a) **Name of person giving notice:**

N95455 **DUNDAS RIDGE PTY LTD T/AS MELBOURNE REEFER SERVICES**

(b) **Short description of business carried on by that person:**

The management and operation of an empty container park.

(c) **Address in Australia for service of documents on that person:**

363-367 Francis Street, Yarraville, Victoria 3013

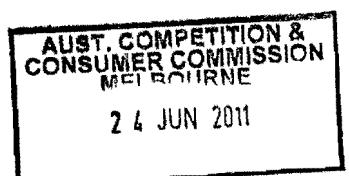
#### 2. Notified arrangement

(a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

The management of container movements to and from the Applicant's container park.

(b) **Description of the conduct or proposed conduct:**

If a transport company wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport company must pre-book space via the nominate website which will include the transport company accepting the Applicant's **Terms of Use** (copy attached).



**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

The Victorian transport and logistics industry, including container transport services operators.

**(b) Number of those persons:**

**(i) At present time:**

None at present

**(ii) Estimated within the next year:**

Substantially more than 50 but less than 150.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See Attachment A.

**(b) Facts and evidence relied upon in support of these claims:**

See Attachment A.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See Attachment A.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

See Attachment A.

**(b) Facts and evidence relevant to these detriments:**

See Attachment A.

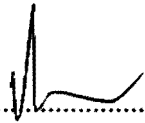
**7. Further information**

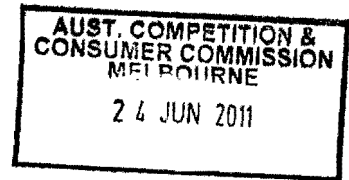
**(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Anthony Joseph Nelson of 132 Jells Road, Wheelers Hill, Victoria 3150

Dated 23-6-2011

Signed by/on behalf of the applicant

(Signature) 



(Full Name) ANTHONY J NELSON

(Organisation) DUNDAS RIDGE Pty LTD T/as Melbourne KEEPER SERVICES.

(Position in Organisation) DIRECTOR

## Attachment A

Submission by **DUNDAS RIDGE PTY LTD T/AS MELBOURNE REEFER SERVICES** ("**Applicant**") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at 363-367 Francis Street, Yarraville, Victoria 3012.
- (b) Containerchain Pty Ltd ("**Containerchain**") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

## **2. Markets and Competition.**

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

## **3. Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address



their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
- (e) Truck queues are unpredictable, leading to congestion and delays.
- (f) Forward planning by all stakeholders is compromised under the present system.
- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

- (a) makes the industry more efficient;
- (b) allows for the management of truck queues and traffic management around empty container parks;
- (c) alleviates driver fatigue by reducing waiting periods;
- (d) reduces congestion and delays by making queues and delivery and pick up times predictable;
- (e) allows stakeholders in the industry to forward plan with confidence;
- (f) ensures that transport operators do not arrive at an empty container park when it is closed;
- (g) allows empty container parks to manage human and other resources efficiently.

The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

The system will also have the benefits of allowing for paperless transactions, full visibility to all stakeholders of relevant information such as turn around times, release status, container availability and the online recording of damage and demurrage function.

#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).

## TERMS OF USE

These terms of use relate to the website "<http://www.containerchain.com>" (the **Website**) and are to be read as part of the Carrier Access Arrangements for access to the empty container park which You are proposing to contract with (in these terms referred to as "We", "Our" or "Us"). Your use of the Website, the online empty container notification software (**Software**) on the Website and any information, materials and services provided on the Website is subject to the terms and conditions set out in these Terms of Use.

### Access Arrangements

- A. Containerchain Pty Ltd (**Containerchain**) is the operator of the Website which We use to provide You with the means to notify Us of an intention to pick up from or deliver to Us an empty container.
- B. Containerchain is also our agent for the invoicing and collection of Container Fees.

You must read and accept these Terms of Use before utilising the Software. By accepting these Terms of Use you are also accepting the terms of our Carrier Access Arrangements.

### 1. NOTIFICATION

- 1.1 The Website allows you to notify your intention to deliver or pick up empty containers from Us (**Services**).
- 1.2 You can notify your intention to arrive using the Software by logging on to your account and carrying out a transaction. You must ensure the information you submit for Your transaction is accurate, current and complete.
- 1.3 Your transaction will be confirmed by the provision of a notification number once You have saved Your notification in the Software. By saving the notification, You agree to comply with the terms of and observe that notification and Our Carrier Access Arrangements.
- 1.4 You acknowledge and agree that We may, in Our sole discretion, suspend or terminate the provision of the Services at any time.

### 2. ACCOUNT

- 2.1 Using the Website, you must first register your details (including, without limitation, your billing details) and an account will be set up for You.
- 2.2 You must not register multiple accounts.

- 2.3 You agree to provide accurate, current and complete information in order to establish an account. You agree to maintain and update your details when those details change. Your right to use the Services may be terminated or the system might not accept Your notification if any of the information you provide is false, inaccurate or incomplete. You agree that your registration details for use in maintaining your account and billing you will be stored in accordance with clause 5 of these Terms of Use.
- 2.4 Once an account has been established for You, You will be provided with an "Account ID", a "User ID" and a password (**Your Account Information**). Your Account Information is confidential and it is your responsibility to maintain its security and confidentiality. You must not permit your account to be used by any other person. You agree that you will be responsible for any unauthorised activity that occurs under your account as a result of your failure to keep Your Account Information confidential and secure.
- 2.5 You agree to notify Us immediately via the website of any unauthorised use of your account or Your Account Information or any other breach of security of your account. In that event, we or Containerchain on our behalf may, in our absolute discretion, suspend, terminate and/or establish a new account for You.

### **3. CONTAINER FEES**

- 3.1 You agree to pay the Container Fees (plus all taxes applicable to those Container Fees) for all notifications you make using the software.
- 3.2 Container Fees will be invoiced on Our behalf by Containerchain on our behalf on a weekly basis.
- 3.3 Invoices will be sent to the nominated email address in your Account.
- 3.4 You must settle invoices in full within fourteen days from the date of invoice by making payment to Containerchain.
- 3.5 You agree that all Container Fees and taxes payable by you in accordance with these Terms of Use will be paid in Australian dollars (AUD\$).
- 3.6 You must ensure that your billing details, are valid.

### **4. USE OF WEBSITE**

You must use the Website only for the purposes set out in these Terms of Use and must not use the Website:

- (a) in breach of any applicable laws or regulations or otherwise for any unlawful or improper purpose;

- (b) in a way which causes, or is likely to cause injury or damage to the Website and/or Software;
- (c) in a way which, or might reasonably be expected to, interferes with, disrupts or creates an undue burden on the Website and/or Software; or
- (d) to encourage or procure the performance of any illegal activity by a third party.

## **5. PRIVACY**

The collection of the private information of individuals is subject to the Privacy Policy on the Website.

## **6. INTELLECTUAL PROPERTY**

You acknowledge and agree that the Website, including the user interface and scripts and Software, contains proprietary information and material that is owned by Containerchain and/or its licensors. You agree not to use such proprietary information or materials in any way except in accordance with these Terms of Use and that you do not have any right, title or interest in or to such proprietary information.

## **7. TAXES**

- 7.1 Unless otherwise stated, fees and charges for any goods or services supplied (or offered for supply) under these Terms of Use are stated exclusive of GST. Where GST applies to any supply made to you, Containerchain will issue you with a Tax Invoice.
- 7.2 All defined terms in this clause 7 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **8. WARRANTIES AND LIMITATION OF LIABILITY**

- 8.1 Your use of the Website, Services and the Software is at your sole risk.
- 8.2 We do not make any representation or warranty that any information or material provided or displayed on the Website will be reliable, accurate or complete and neither we nor Containerchain accept any responsibility arising in any way from any error or omission in or from information or material on the Website.
- 8.3 To the extent permitted by law, all conditions and warranties (whether express, implied or statutory) relating to your use of the Website or the Software are excluded.
- 8.4 To the extent that liability for breach of any implied warranty, term, condition or consumer guarantee cannot be excluded by law, liability for breach of that implied warranty, term, condition or consumer guarantee will be limited, at Our sole discretion, to any one or more of the following:

- (a) the supplying of the Services giving rise to the liability again; or
- (b) the payment of the cost of having those Services supplied again.

8.5 In relation to any express warranty, term or condition set out in these Terms of Use in connection with Services supplied or offered by Us, Our liability to you is limited to any amount paid by you (if any) in respect of those Services.

8.6 To the extent permitted by law, neither We nor Containerchain will be liable (whether in contract, tort or on any other basis in law or in equity) for any personal injury or any incidental, special, indirect or consequential loss or damage whatsoever, including damages for loss of profits, loss of data and business interruption arising out of or related to the use of, or inability to use, the Website and/or the Software.

## 9. **SUSPENSION AND TERMINATION**

9.1 We have given Containerchain the right, in its sole discretion, to suspend or terminate your account or access to your account, if Containerchain believes:

- (a) you have breached these Terms of Use; or
- (b) circumstances exist beyond its reasonable control, including acts of any government or administrative body, war, insurrection, sabotage, embargo, fire, flood, strike or other industrial action, unavailability or interruption or delay in telecommunication services or third party services (**Force Majeure Event**) which prevent it from carrying out its obligations in accordance with these Terms of Use.

9.2 Without limiting clause 8, neither We nor Containerchain will be responsible for any failure or delay in delivery of the Services where such failure is directly or indirectly caused by any of the following

- (a) a Force Majeure Event;
- (b) the failure of your internet connection;
- (c) a domain name system issue beyond our direct control including, without limitation, the introduction of a computer virus, hacking into the Website by third parties and other forms of electronic sabotage; or
- (d) any breach of these Terms of Use by You.

## 10. **GENERAL**

10.1 You acknowledge and agree that Containerchain on Our behalf may, from time to time, update, vary or amend these Terms of Use. If Containerchain updates, varies or

amends these Terms of Use it will publish the updated, varied or amended Terms of Use on the Website and you agree to be bound by those Terms of Use.

- 10.2 Any provision of these Terms of Use which is prohibited or unenforceable in any jurisdiction is, where possible, to be severed to the extent necessary to make these Terms of Use enforceable. Any such severability does not invalidate the remaining provisions of these Terms of Use nor affect the validity or enforceability of that provision in any other jurisdiction.
- 10.3 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 10.4 These Terms of Use are governed by the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

# Form G

Commonwealth of Australia

Competition and Consumer Act 2010 -- subsection 93 (1)

## NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the Competition and Consumer Act 2010, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

### 1. Applicant

(a) Name of person giving notice:

N95456 **MURCOTT PTY LTD.**

(b) Short description of business carried on by that person:

The management and operation of an empty container park.

(c) Address in Australia for service of documents on that person:

265-281 Sunshine Road, Tottenham, Victoria, 3012

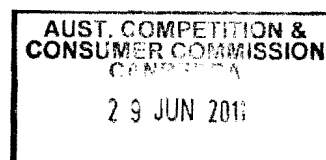
### 2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The management of container movements to and from the Applicant's container park.

(b) Description of the conduct or proposed conduct:

If a transport company wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport company must pre-book space via the nominate website which will include the transport company accepting the Applicant's Terms of Use (copy attached).



**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

**(a) Class or classes of persons to which the conduct relates:**

The Victorian transport and logistics industry, including container transport services operators.

**(b) Number of those persons:**

**(i) At present time:**

None at present

**(ii) Estimated within the next year:**

Substantially more than 50 but less than 150.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of notification:**

See Attachment A.

**(b) Facts and evidence relied upon in support of these claims:**

See Attachment A.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See Attachment A.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

See Attachment A.



**(b) Facts and evidence relevant to these detriments:**

See Attachment A.

**7. Further information**

**(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Anthony Joseph Nelson of PO Box 648, Sunshine, Victoria, 3020

Dated.....29/6/2011.....

Signed by/on behalf of the applicant

.....ANTHONY NELSON.....

(Signature)

..........

(Full Name)

.....MURCOTT Pty LTD.....

(Organisation)

.....MANAGING DIRECTOR.....

(Position in Organisation)

## Attachment A

Submission by **MURCOTT PTY LTD** ("*Applicant*") in support of Notification under Section 93 of the Competition and Consumer Act 2010 (Commonwealth).

### 1. Overview of proposed conduct

- (a) The Applicant is a private company that operates an empty container park situated at 265-281 Sunshine Road, Tottenham, Victoria 3012.
- (b) Containerchain Pty Ltd ("*Containerchain*") is private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant has negotiated an arrangement with Containerchain. Under this arrangement, container transport companies that wish to drop a container off at or pick up a container from the Applicant's park will be required to enter the relevant details in the website at [www.containerchain.com](http://www.containerchain.com). That information will be fed through to the Applicant and various time slots will be offered to the transport company as to when they can pick up or drop off the container. The transport company will pay a booking fee for this service. The booking fee is set by the Applicant and is expected to be adjusted from time to time by the Applicant having regard to competitive market forces. The contractual arrangements are terminable by either party on 30 days prior notice. Container transport companies are not tied in any way to any individual container park (including the Applicant).
- (d) Under the terms of use, the Applicant will be providing the full range of services to the transport operators through both its employees and contractors under the proposed arrangements. Containerchain provides access to its website and invoicing and fee collection services to the Applicant under the arrangement. The supply of services by the Applicant is not conditioned on the acquisition by the transport company of other services from another party.
- (e) Concerns to the effect that the proposed arrangement contravenes section 46(7) of the Competition and Consumer Act 2010 have been expressed by the Victorian Transport Association and Toll Transport Pty Ltd.
- (f) The need for such arrangements has arisen due to significant problems for many years with trucks having to queue to gain access to container parks in order to load and unload containers. This is not only inefficient but potentially dangerous, with long queues of trucks lined up along busy main and trunk roads in the vicinity of the Port of Melbourne waiting to enter the container parks. The system that the Applicant is implementing will alleviate this problem to a significant extent, if not entirely.

## **2. Markets and Competition.**

In the context of section 47(6) conduct (which is not admitted), the only market affected by such conduct would be the market in which the forced goods or services compete. In this particular case, this would be the market in which the services provided by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions. To the extent that the market would include such mechanisms which were computer based and which operated through a web portal, the number of competing products would be many and the number of products which could be customised for this purpose would add to that number. The barriers to entry to that market would be relatively low in that competent computer programmers could develop programs similar to that employed by Containerchain without undue difficulty. Accordingly, it is submitted that the relevant market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

The proposed conduct will have no detrimental effect on competition. In terms of foreclosure, the agreement between the Applicant and Containerchain is terminable by either party on 30 days notice and therefore the negative impact of the Agreement is minimal; notwithstanding that it requires the Park to use the Containerchain system except in circumstances where containers are booked to be delivered or picked up in a bulk run, containers are delivered to or picked up under an account in the Park's name or in respect of containers hired, purchased or sold by the Park. Further, no transport operator is (or will be) tied in any way to any particular empty container park – there is complete freedom to deal (or not deal) and to change sources of supply.

Furthermore, the transaction fee charged by the Park for a delivery or pick up can be changed by the Park in its discretion, having regard to competitive forces.

## **3. Public benefits and detriment**

The Applicant submits that the benefit to container transport companies and the public likely to result from the notified conduct would significantly outweigh any potential detriment.

By way of background it is noted that:

- (a) The Port of Melbourne continues to increase in Container volumes and landside logistics require efficiencies to meet current volumes plus anticipated future growth.
- (b) Empty Container parks are classified as "Loading Managers" under Chain of Responsibility Legislation and as such have a legal obligation to manage the truck queues and provide effective traffic management around their parks.
- (c) The Victorian Law Enforcement Group (made up of Vic Police, Work Safe and Vic Roads) has advised the parks that the failure to adequately address their responsibilities as "Loading Managers" will attract the applicable penalties.

- (d) The present system adds to driver fatigue through extended waiting periods.
- (e) Truck queues are unpredictable, leading to congestion and delays.
- (f) Forward planning by all stakeholders is compromised under the present system.
- (g) There is a mismatch between opening hours of Parks and the schedules of transport operators.

The Containerchain system addresses all of these problems. It:

- (a) makes the industry more efficient;
- (b) allows for the management of truck queues and traffic management around empty container parks;
- (c) alleviates driver fatigue by reducing waiting periods;
- (d) reduces congestion and delays by making queues and delivery and pick up times predictable;
- (e) allows stakeholders in the industry to forward plan with confidence;
- (f) ensures that transport operators do not arrive at an empty container park when it is closed;
- (g) allows empty container parks to manage human and other resources efficiently.

The system will not only benefit empty container parks and drivers but will also benefit transport operators by improving truck turn around times which will reduce operational costs and increase truck utilisation for those operators.

The system will also have the benefits of allowing for paperless transactions, full visibility to all stakeholders of relevant information such as turn around times, release status, container availability and the online recording of damage and demurrage function.

#### **4. Conclusions**

For the reasons set out above, we submit that the Commission should not revoke the Notice on the basis that the benefits (including the pro-competitive and other public benefits identified above) of the new system far outweigh any possible anti-competitive detriments (of which there are submitted to be none).