

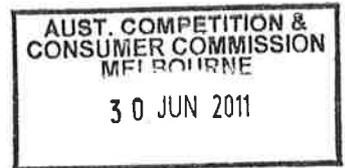
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Commonwealth of Australia

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:

N95465 **CC CONTAINERS 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:

2 Somerville Road, Footscray, Victoria 3011

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 operator wishes to use the services of the Applicant's container park, then one of the terms of use will be that the transport operator must first secure a container booking via the nominate website in accordance with the Applicant's **Terms of Use** (copy attached).

Alternatively, if a transport operator seeks access to the Applicant's container park without having first secured a container booking via the nominated website in the above manner, the Applicant may refuse to grant (or defer granting) that transport operator access to the Applicant's container park.

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:**

David Muir of PO Box 79, Altona North, Victoria 3025

Dated..... 29/6/2011

Signed by/on behalf of the applicant

..... *A. Crozier*

(Signature)

..... *Angelina Crozier*

(Full Name)

..... *CC Containers Pty Ltd*

(Organisation)

..... *Financial Controller*

(Position in Organisation)



Attachment A

Submission by **CC CONTAINERS 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 2 Somerville Road, Footscray, Victoria 3011.
- (b) Containerchain Pty Ltd ("*Containerchain*") is a private company that has developed a software program which facilitates the movement of empty containers to and from empty container parks.
- (c) The Applicant is proposing to enter into 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. 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 proposes to provide access to its website and invoicing and fee collection services to the Applicant under the proposed arrangement.
- (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 proposing to implement will alleviate this problem to a significant extent, if not entirely.

2. **Markets and Competition.**

In the context of section 47(6) and section 47(7), the markets most directly affected by the relevant conduct (which is not admitted) would be the markets in which:

- (a) businesses compete for the development, maintenance and management of scheduling systems to co-ordinate the type of events the subject of this notification; and
- (b) road transport operators compete for access to empty container parks to pick-up or drop-off empty containers.

Scheduling systems

It is within this scheduling systems market that Containerchain competes. 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 this market for the purposes of this notification is extremely broad and highly competitive; particularly given that there are no long term contractual arrangements involved.

Road transport services

The scheduling system to be operated by the Applicant is designed to introduce greater efficiencies in the market for road transport services by facilitating timely access to the Applicant's empty container park for the purpose of picking-up or dropping off containers.

While the scheduling system introduces a new advanced booking system, it is unlikely to prevent or deter road transport operators from continuing to compete. Indeed, it is expected to enhance the efficiency and effectiveness of their transport services.

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.

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 allow the notification 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).
