

5 July 2011

David Hatfield
Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601



Empty Container Parks Exclusive Dealing Notifications N 95450 – N95456

Dear David,

The Customs Brokers and Forwarders Council of Australia Inc (*CBFCA*) has had a long interest in port landside logistic efficiencies and has provided comment to the Australian Competition and Consumer Commission (*ACCC*) on a variety of related issues. While CBFCA members do not, in the main, provide transport services they are one of the major contractors to transport operators involved in port activities. To that end, the CBFCA has a close working relationship with state based road transport associations on a national basis.

In its role as the peak industry association representing service providers in international trade logistics and supply chain management, the CBFCA has had exposure to, and an understanding of, the issues associated with the ACCC *exclusive dealing notifications N9540 - N95456* involving Containerchain Pty Ltd (*Containerchain*) and the following Melbourne based empty container park (ECP) businesses :

- Victorian Container Management Pty Ltd
- Dundas Ridge Pty Ltd T/as Melbourne Reefer Services
- Allied Container Services Pty Ltd
- Chalmers Industries Pty Ltd
- Raftnet Pty Ltd T/as Container Logistics
- Ocean and Air Cargo Services Pty Ltd T/as Oceania Container Services
- Murcott Pty Ltd
- Port Melbourne Containers Pty Ltd (*exclusive dealing notification 95413*)

Customs Brokers & Forwarders
Council of Australia Inc.

National Office

Tel: 07 3252 1348

Fax: 07 3252 1159

PO Box 303 Hamilton Qld 4007

Brisbane Australia

Email: cbfcano@cbfca.com.au

Website: www.cbfca.com.au



ABN 92 287 746 091

As outlined in the attached correspondence to the Victorian Transport Association (*VTA*) dated 22 October 2010, the CBFCA remains of the view that port reforms should extend beyond the proposed implementation of ECP delivery notification system with a review of other pertinent operational issues including extension to opening hours. The correspondence sent to the VTA also highlights the CBFCA concerns as it relates to the cost recovery methodology linked to the Containerchain model.

The CBFCA understands that the referenced ECPs intend to commence implementation of the Containerchain delivery notification system during the course of 2011 and will be introducing fees payable against every delivery notification. In order to dehire (*return*) empty containers, transport operators will have to subscribe to and be on account with Containerchain. Transport operators cannot select alternate ECPs as the destinations for container dehire are nominated on the delivery order by the shipping line that owns the container.

The CBFCA is of the opinion that fees associated with Containerchain (*and / or any other technology solutions*) should be either absorbed by the ECPs or passed on in contractual arrangements to their client shipping lines. This approach would avoid any suggestion of anti-competitive conduct, as the shipping line could negotiate fees direct with ECPs in an open market. Should the shipping lines accept increased fees, they too then have the choice to absorb these costs or pass these on as a part of existing port service charges which again is subject to commercial negotiations between the consignee and shipping line.

In summary, the current Containerchain cost recovery model forces the transport operator to pay transactional fees with no ability to influence associated service or price. Based on this outcome, the CBFCA is of the view that the referenced ECPs are engaging in an exclusive dealing arrangement in terms of the Competition and Consumer Act 2010.

Should you require further information pertaining to this submission, please do not hesitate to contact me direct on 02 99753075 or email pzalai@cbfca.com.au.

Yours faithfully



PAUL ZALAI
Manager Freight and Business Operations

22 October 2010

Neil Chambers
Victorian Transport Association
PO Box 5
South Melbourne VIC 3205



Dear Neil,

The Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) notes the objectives and work completed to date by the empty container park (ECP) *Visibility and Exchange Working Group*. To that end, the CBFCA supports the need to reform existing ECP processes and systems to meet statutory and commercial requirements of all stakeholders.

The CBFCA sees that such reforms should include the ongoing requirement for shipping lines to evacuate empty containers to minimise congestion at ECPs, introduction of software solutions using shipping line data to assist ECPs in predicting peaks to best utilise limited human resources / equipment and transmission of regular ECP notices to the transport sector on operational performance issues. The CBFCA also supports the approach from the Victorian Transport Association (VTA) focussing on a holistic solution in achieving a wider spread of operating hours across the entire container supply chain noting that most empty container parks currently only open nine (9) hours per day during normal working days (*weekends and public holidays excluded*), making it difficult to de-hire empty containers on the same day that the unpack is completed.

The CBFCA opposes the concept of imposing Vehicle Booking System (VBS) disciplines at ECPs as this would most likely result in additional staged movements of containers to ensure adherence to allocated time slots. This in turn would impose additional transport moves, congestion and costs which would not be supported by the import / export sectors.

The CBFCA also understands that ECPs intend to establish fee structures for booking VBS slots which will be collected by the entity providing the software / VBS interface. Transport companies will have to subscribe to the provider of the VBS interface and be on account. The CBFCA also has concerns that if a VBS is introduced, that ECPs may include other fees (Infrastructure etc) onto the VBS rather than attempting to recover this from shipping lines as they do today.

Customs Brokers and
Forwarders Council of Australia
Inc.

Victoria Office

Tel: 03 9338 4371
Fax: 03 9338 4370
PO Box 1071

Tullamarine VIC 3043 Australia
E-mail: cbfcavic@cbfca.com.au
Website: www.cbfca.com.au

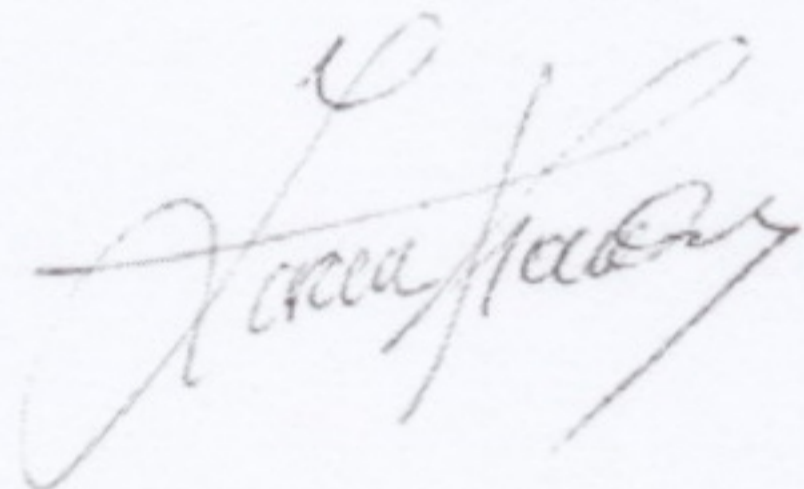
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The CBFCA is aware that these costs will be passed through to the ultimate consumer however the issue is about accepted principles being applied in a consistent manner to the party to whom the cost is most relevant as part of a contractual arrangement. The CBFCA's position is that such costs relating to ECP activities should be incorporated in the shipping line's port service charge and not levied on CBFCA members via the transport operator (this for a variety of efficiency and cost mitigation reasons).

The CBFCA would appreciate your views on the above referenced issues and looks forward to a continued close working relationship with the VTA as a part of an overall focus on achieving improvements on port and landside logistics.

Kind regards

A handwritten signature in black ink, appearing to read 'Zoran Kostadinovski', written in a cursive style.

ZORAN KOSTADINOSKI
Manager Business Development
Manager Victoria & Tasmania

CC: Stephen Morris – Executive Director (CBFCA)
Paul Zalai – Manager Freight & Business Operations (CBFCA)