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Senior Project Officer
Adjudication Branch
Australian Competition & Consumer Commission
360 Elizabeth Street
MELBOURNE VIC 3000

FILE No:

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MARS/PRISM:

Dear Anna

Third line forcing notifications from empty container park operators at the Port of Melbourne – N95450–N95456 – submission of Toll Transport Pty Ltd

We act for Toll Transport Pty Ltd (Toll).

The ACCC invited Toll by letter dated 29 June 2011 to make a submission providing Toll's comments on the conduct notified by seven empty container park operators serving the Port of Melbourne, namely:

- (a) Victorian Container Management Pty Ltd;
- (b) Dundas Ridge Ltd t/a Melbourne Reefer Services;
- (c) Allied Container Services Pty Ltd;
- (d) Chalmers Industries Pty Ltd;
- (e) Raftnet Pty Ltd t/a Container Logistics;
- (f) Ocean and Air Cargo Services Pty Ltd t/a Oceania Container Services; and
- (g) Murcott Pty Ltd

(the empty container park operators).

We understand that the purpose of the ACCC's invitation was to enable it to gather and consider information so it can make an informed decision about whether to issue notices to the empty container park operators, and thereby prevent immunity for the notified conduct coming into effect or revoke that immunity, under section 93(3A) of the *Competition and Consumer Act 2010* (Cth) (CCA).

This letter sets out Toll's submissions on the empty container park operators' notifications.

1. Submission on Port Melbourne Containers' third line forcing notification

- 1.1 Toll submits that the conduct notified by the empty container park operators raises substantially the same issues as those raised by the notification (N95413) and submission made by Port Melbourne Containers (PMC).
- 1.2 The conduct notified by the empty container park operators will not result in a net public benefit, for the same reasons as outlined in Toll's submission dated 1 July 2011 on PMC's notification. Toll adopts that submission and requests that the ACCC take this into account in its consideration of these further notifications.
- 1.3 Please note that Toll's submission dated 1 July 2011 contains confidential information. Toll requests that the ACCC keep the confidential information strictly confidential and not include it in its public register, nor disclose it to any third party without the prior consent of Toll.

2. Additional comments

- 2.1 There are two aspects of the empty container park operators' notifications on which Toll wishes to provide additional comments, as set out below.

Insufficient evidence of net public benefits

- 2.2 We acknowledge that the submissions provided by the empty container park operators in support of their notifications attempted to provide information about the detriments and benefits of the notified conduct.
- 2.3 However, as with PMC's notification and submission, no material has been provided by the empty container park operators that could reasonably satisfy the ACCC that there is likely to be a public benefit that will outweigh the detriment which Toll believes will result from the relevant conduct.
- 2.4 Toll has identified, in its earlier submission, the detriment that it considers will result from the notified conduct. No information was provided in the later submissions to show that the public benefits from the conduct would outweigh these detriments. The submissions are vague as to what the public benefits and detriments would be. At best, they contain only high-level assertions about possible public benefits and no acknowledgement of any detriments. No underlying facts or evidence were identified or provided to support any aspect of the submissions.
- 2.5 Further, the relevant conduct has been the subject of detailed discussions between Toll, the empty container park operators (and PMC), Containerchain, transport operators, and the Victorian Transport Association over an extended period. Despite Toll's active participation in those discussions, it is not aware of any cogent evidence put forward by any party during that time to indicate that the conduct would result in net public benefits, having regard to the significant detriments that would result from the Containerchain scheme as outlined in Toll's submission dated 1 July 2011.

Relevant markets

- 2.6 Section 2 of the empty container park operators' submissions in support of the notifications (entitled 'Markets and Competition') suggest that the only market affected by the notified conduct is '...the market in which the forced goods or service compete. In this particular case, this would be the market in which the services provide by Containerchain compete. This market would be a market for the development of mechanisms which facilitate the scheduling of certain events or actions.'
- 2.7 Toll submits that although the market for the mechanisms for the scheduling of container movements (amongst other things) may be affected, other markets will also be affected. In particular, the market for container storage services will be affected, since the service providers in this market are seeking to modify the terms on which they will supply services. Further, the market for container shipping services is potentially affected, since the notified conduct will increase the costs faced by transport and shipping operators wishing to do business at the Port of Melbourne.
- 2.8 Toll submits that the ACCC must take into account the claimed public benefits and the detriment associated with the notified conduct, in all affected markets, before it can make a decision about whether the notified conduct should have immunity.
- 2.9 In addition, section 2 of the empty container park operators' submissions inaccurately describes the nature of the relationship between transport operators and empty container parks. This relationship is described in Toll's submission on PMC's notification (see in particular paragraphs 2.2 to 2.7 and 3.25 to 3.29 of that submission).

Please contact us if you have any questions about this submission, or would like any further information.

Yours faithfully
MINTER ELLISON



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