

Statement of Reasons

in respect of notifications lodged by

**Port Melbourne Containers Pty Ltd
Victorian Container Management Pty Ltd
Raftnet Pty Ltd T/A Container Logistics
Chalmers Industries Pty Ltd
Allied Container Services Pty Ltd
Dundas Ridge Pty Ltd T/A Melbourne Reefer Services
Ocean & Air Cargo Services Pty Ltd T/A
Oceania Container Services
Murcott Pty Ltd
CC Containers Pty Ltd**

Date: 26 August 2011

**Notification no's. N95413; N95450 –
N95456; and N95465**

**Public Register no. C2011/469;
C2011/573; and C2011/599**

Summary

The Australian Competition and Consumer Commission (ACCC) received nine notifications, between 25 May 2011 and 30 June 2011, regarding possible third line forcing conduct from operators of empty container parks operating in the Port of Melbourne precinct (the Applicants). The ACCC is satisfied that the likely benefit to the public from the proposed conduct will in each case outweigh the likely detriment of the proposed conduct and does not intend to take any further action at this time.

The Applicants will individually enter into an arrangement with Containerchain Pty Ltd under which container transport operators who wish to drop a container off or pick up a container from the Applicant's park will be required to use an online booking system provided by Containerchain Pty Ltd (www.containerchain.com). A time slot is then allocated to the container transport operator as to when to drop off and pick up their shipping containers. The container transport operator will pay a booking fee to Containerchain Pty Ltd for this service.

The Containerchain Logistics System (Containerchain) is strongly endorsed by industry, Government, the Institute for Supply Chain and Logistics and others who suggest that container transport operators stand to benefit from the system proposed by the empty container parks. It is claimed that Containerchain will provide an increase in throughput capacity, improved efficiency, enhanced transparency and data availability and better integration with the supply chain. The Victoria Police and VicRoads also support a system that will facilitate compliance with the Chain of Responsibility obligations of empty container parks.

Interested party submissions from container transport operators, the Victorian Transport Association and the Customs Brokers & Forwarders Council of Australia Inc have raised concerns relating to the implementation of Containerchain including an increase in the land side costs of handling, storing and transporting empty containers; an inflexibility of movement and handling of containers; additional administration costs and resources; and the increased requirement to 'stage' or double handle containers.

The ACCC considers that the notified conduct is likely to result in public benefits in the form of improved efficiency, at empty container parks and more broadly; the promotion of efficient investment; and facilitating compliance with legal obligations, leading to a greater reduction in fatigue related accidents, safer roads and reduced noise pollution around the Port of Melbourne precinct than is likely without Containerchain.

The ACCC considers that the notified conduct is likely to result in public detriments in the form of a potential reduction in flexibility for container transport operators, and an increase in cost to access the empty container parks. However, the ACCC considers that the potential detriments arising from a loss of flexibility for container transport operators may be transitional as they move towards more efficient operating practices afforded by the greater certainty and better information expected as a result of the implementation of Containerchain.

On balance, the ACCC is satisfied that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public and has therefore decided not to take any further action at this time. The ACCC notes that it can review these notifications at any time.

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List of Abbreviations

Act	Competition and Consumer Act 2010 (Cwlth)
ACCC	Australian Competition and Consumer Commission
Applicants	Empty Container Park operators listed on the cover page of this document
CBFCA	Customs Brokers & Forwarders Council of Australia Inc
Containerchain	Containerchain Logistics System
CTO	Container Transport Operators
Empty Container Park(s)	Empty Container Park / Empty Container Park operator
ft	foot
ISCL	Institute for Supply Chain and Logistics, Victoria University
PMC	Port Melbourne Containers
Secon	Secon Carriers Pty Ltd T/a Secon Freight Logistics
TEU	Twenty-foot Equivalent Unit
VTA	Victorian Transport Association

1. Introduction

- 1.1. The Australian Competition and Consumer Commission (the ACCC) is the Commonwealth agency responsible for administering the *Competition and Consumer Act 2010* (the Act). A key objective of the Act is to prevent conduct or arrangements that are anti-competitive, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.
- 1.2. Section 47 of the Act in certain circumstances prohibits conduct known as exclusive dealing. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.
- 1.3. Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as 'third line forcing' which involves the supply of goods or services on condition that the customer also acquire goods or services from a third party. Third line forcing conduct is a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition.
- 1.4. Businesses may obtain immunity in relation to conduct that might be at risk of breaching the exclusive dealing provisions of the Act by lodging a 'notification' with the ACCC. Once lodged, immunity for the notified conduct commences automatically, or in the case of third-line forcing, after 14 days. The ACCC may proceed to revoke a third-line forcing notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.
- 1.5. In effect, revoking a notification removes the immunity conferred by the lodging of the notification. The ACCC conducts a comprehensive public consultation process before making a decision to revoke a notification.
- 1.6. Where the ACCC forms the view that the conduct the subject of a third line forcing notification is likely to generate a detriment to the public which outweighs the benefits to the public, it may commence the revocation process.
- 1.7. Where the ACCC allows a notification to stand it will generally not release a written statement of reasons. However, in some circumstances, particularly where the notification is likely to be of interest to, or likely to affect, the public or interested parties in the industry to which the notified conduct relates, the ACCC will issue a written document outlining its reasons for allowing the notification to stand. This document outlines the ACCC's reasons for allowing notifications N95413; N95450 – N95456; and N95465 to stand.
- 1.8. Where a notification in relation to third line forcing conduct is allowed to stand, the ACCC may act to remove the immunity afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

2. Conduct

2.1. The following notifications were lodged in relation to conduct that may be in breach of sections 47(6) and 47(7) of the Act:

25 May 2011

- N95413 was lodged by Port Melbourne Containers Pty Ltd (PMC)

24 June 2011

- N95450 was lodged by Victorian Container Management Pty Ltd
- N95451 was lodged by Raftnet Pty Ltd T/A Container Logistics
- N95452 was lodged by Chalmers Industries Pty Ltd
- N95453 was lodged by Allied Container Services Pty Ltd
- N95454 was lodged by Dundas Ridge Pty Ltd T/A Melbourne Reefer Services

29 June 2011

- N95455 was lodged by Ocean & Air Cargo Services Pty Ltd T/A Oceania Container Services
- N95455 was lodged by Murcott Pty Ltd

30 June 2011

- N95465 was lodged by CC Containers Pty Ltd.

2.2. The notified conduct is as follows:

If a transport company wishes to use the services of Port Melbourne Containers Pty Ltd's container park, then one of the terms of use will be that the transport company must pre-book space via the nominated website which will include the transport company accepting Port Melbourne Container's Terms of Use.

2.3. The Applicants are operators of empty container parks around the Port of Melbourne. Empty container parks are responsible for the handling, cleaning, repair and storage of empty containers for the shipping lines.

2.4. The Applicants have each negotiated an arrangement with Containerchain Pty Ltd. Under the Containerchain Logistics System (Containerchain), container transport operators who wish to drop a container off or pick up a container from the Applicants' parks will be required to enter relevant details in the website at www.containerchain.com. A time slot is then allocated to the container transport operator as to when to drop off and pick up their shipping containers. The container transport operator will pay a booking fee for this service which is to be collected by Containerchain Pty Ltd on behalf of the empty container park. The fee is currently set at \$5 per booking by each of the empty container parks except for one who will charge \$5.50. The ACCC notes that the amount charged as a booking fee does not form part of the notified conduct.

2.5. Under Containerchain each empty container park sets its own rules of use and they may differ between empty container parks. For example an empty container park

may introduce a flexible notification system whereby container transport operators notify their intentions through the system but are able to arrive at a time of their choosing. Alternatively, a more rigid system may be adopted, whereby container transport operators are only entitled to arrive at their designated time (often referred to as time slotting).

- 2.6. The contractual arrangement between each empty container park and Containerchain Pty Ltd will be terminable by either party on 30 days prior notice.¹
- 2.7. As set out above, each of the nine empty container parks has submitted a notification for their respective individual arrangements in relation to Containerchain. These notifications provide immunity for the specified third line forcing conduct only and do not provide immunity for any agreements between empty container parks that may raise concerns under section 45 of the Act.
- 2.8. The Applicants' arguments in support of the notification are discussed below in section 5.

3. Statutory test

- 3.1 Section 93 of the Act provides that a corporation that engages or proposes to engage in conduct of a kind referred to in subsection 47 (6) and (7) may give to the ACCC notice, as prescribed, setting out particulars of the conduct or proposed conduct.
- 3.2 Under section 93 (3A), if a corporation has notified the ACCC of conduct or proposed conduct of the type described in subsection 47(6) or 47(7) and the ACCC is satisfied that the likely benefit to the public from the conduct or proposed conduct will not outweigh the likely detriment to the public from the conduct or proposed conduct, the ACCC may give the corporation a written notice stating that the ACCC is so satisfied. The effect of giving such a notice is to revoke the immunity from the Act afforded by the lodging of the notification.

4. Background

Description of the supply chain in which the empty container parks operate

- 4.1. The Port of Melbourne is Australia's largest container terminal by throughput with 1.9 million TEU² handled in 2009/2010³. Container movements through the Port of Melbourne have grown strongly in recent years and are expected to continue to grow. Projections by the Port of Melbourne suggest that container movements in Victoria will grow to around 7.06 million TEU by 2035.⁴ The Victorian

¹ If the contractual arrangement is terminated within the initial 3 year period, damages may be payable.

² Twenty-foot equivalent units.

³ 'Port of Melbourne Additional Container Capacity' Market Sounding Discussion Paper; 19 August 2010, p.7.

⁴ 'Port of Melbourne Additional Container Capacity' Market Sounding Discussion Paper; 19 August 2010, p.8.

Government is investigating a variety of measures to ensure sufficient infrastructure capacity to meet the growth in container movements including:⁵

- moving the import-export car trade from Melbourne to Geelong
- developing the Port of Hastings as a future container terminal.

- 4.2. Empty container parks supply storage, cleaning and maintenance of shipping containers for their clients, shipping lines. Empty containers are collected from or delivered to empty container park by container transport operators. Shipping lines have contractual agreements with specific empty container parks, generally restricting or removing any flexibility regarding which empty container park container transport operator must attend.
- 4.3. Container transport operators' primary clients are importers and exporters, although they also provide services directly to shipping lines in certain circumstances. For example, when the shipping lines expect a vessel to depart the terminal with spare capacity, the shipping line may contract container transport operators to collect empty containers from empty container parks to be repatriated overseas. This is often referred to as a 'bulk run', and is required as part of the management of the import-export imbalance at the Port of Melbourne. Bulk runs may be required after hours or during normal park operating periods. However, they typically take priority over other container collections and deliveries at the instruction of the shipping lines.
- 4.4. The requirement to repatriate empty containers also arises because of the growing trend towards 40ft containers for imports, while exports often require 20ft containers owing to the nature of exports which are often too heavy to make productive use of 40ft containers. Further, following the global financial crisis (2008–9), container exports through the Port of Melbourne were significantly reduced while the volume of container imports was not affected to the same extent. This resulted in a significant increase in inventories at empty container parks and compounded congestion and queuing issues. A representative of the Victoria Police advised that queues can often be 2–6 hours long which raises road safety and congestion concerns in the precinct.⁶
- 4.5. There are two primary container terminals at the Port of Melbourne; one run by DP World, the other by Patricks. For container transport operators to access the terminals to collect or deliver containers, they are required to adhere to a vehicle booking system known as '1-stop'. This system requires container transport operators to pay a fee, nominate a specific available time slot and pay penalty fees should they not adhere to their allocated time slot.
- 4.6. Further to recent amendments to the Road Safety Act 1986,⁷ all State and Territory Road Ministers approved a National Heavy Vehicle Driver Fatigue Policy to include

⁵ Speech by the Minister for Ports, Hon Dr Denis Napthine MP to Shipping Australia Ltd Victorian State Committee Luncheon 2011, 28 July 2011.

⁶ David Newton, Superintendent, Victoria Police, 24 June 2011, Record of Oral Submission.

⁷ The Road Legislation Further Amendment Act 2007.

provisions relating to fatigue management of truck drivers. Often referred to as the Chain of Responsibility Legislation, it places obligations on various parties in the supply chain in relation to road laws rather than just drivers. The objectives of the reforms are to improve compliance outcomes for road safety (particularly through fatigue management), infrastructure and the environment, while minimising the adverse impacts of road transport on the community.

- 4.7. Pursuant to Chain of Responsibility Legislation, empty container parks are classified as ‘loading managers’ and can be fined if they do not take reasonable steps to limit truck turnaround times to within 30 minutes or provide rest facilities for drivers while waiting to be served.⁸

5. Applicant’s submission

Public benefit

- 5.1. Each of the Applicants provided similar supporting submissions with their notifications, outlining the following public benefits they believe will flow from the proposed conduct:
- promote a more efficient industry
 - allow for the management of truck queues and truck management
 - alleviate driver fatigue by reducing waiting periods
 - reduce congestion and delays by allowing pick up and drop off times to become predictable
 - allow for efficient management of human and other resources
 - allow stakeholders to forward plan with confidence
 - ensure that container transport operators do not arrive when the empty container park is closed
 - benefit container transport operators by improving truck turn around times, reducing operational costs and increasing truck utilisation for those operators
 - allow for paperless transactions, full visibility to all stakeholders of relevant information, such as turnaround times, release status, and online recording of damage and demurrage function.

⁸

David Newton, Superintendent, Victoria Police, 24 June 2011, Record of Oral Submission <http://www.vicroads.vic.gov.au/Home/Moreinfoandservices/HeavyVehicles/ComplianceAndAccreditation/ChainOfResponsibility.htm>

Public detriment

- 5.2. The Applicants consider that the conduct will have no detrimental effects on competition.

6. Interested party submissions

- 6.1. The ACCC consulted with a variety of interested parties in relation to the notifications, including:
- Industry participants including container transport operators and country carriers
 - industry representative associations
 - Government agencies.
- 6.2. The ACCC received submissions in response to any or all of the notifications from the following parties:
- (a) Melbourne Reefer Services
 - (b) Chalmers industries
 - (c) Melbourne Container Park
 - (d) Victorian Container Management Pty Ltd
 - (e) Transaction Produce Pty Ltd
 - (f) Containerchain Pty Ltd
 - (g) Port of Melbourne Corporation
 - (h) Dunns Transport
 - (i) KP Group
 - (j) Canny Carrying Co
 - (k) Secon Carriers Pty Ltd
 - (l) Victorian Transport Association Inc
 - (m) Sunace Australia Pty Ltd
 - (n) Westgate Ports Services
 - (o) Allied Container Services Pty Ltd
 - (p) IWD Pty Ltd
 - (q) Customs Brokers & Forwarders Council of Australia Inc
 - (r) Toll Transport – **Part Confidential**
 - (s) Shipping Australia Limited
 - (t) CC Containers Pty Ltd
 - (u) Container logistics
 - (v) David Newton, Superintendent of the Victoria Police
 - (w) Dr Hermione Parsons, Institute for Supply Chain and Logistics, Victoria University.
- 6.3. The submissions made by interested parties are summarised below. Copies of all public submissions received by the ACCC are available on the public register at www.accc.gov.au/exclusivedealingregister.

Interested party submissions in support of the notification

- 6.4. Interested party submissions, with the exception of container transport operators and the Customs Brokers & Forwarders Council of Australia Inc, were supportive of the implementation for reasons similar to those submitted by the Applicants (see paragraph 5.1). Parties that made supporting submissions include Shipping Australia Limited, Westgate Ports Services, Port of Melbourne Corporation and Containerchain Pty Ltd.⁹ It is claimed that Containerchain will provide an increase in the throughput capacity, improved efficiency, enhanced transparency and data availability and better integration with the supply chain.
- 6.5. The ACCC also notes support for Containerchain from the Victorian Government and the Institute for Supply Chain and Logistics.¹⁰
- 6.6. While also raising concerns with the proposed arrangements, the Victorian Transport Association Inc (VTA) representing its member container transport operators, acknowledged that Containerchain may result in the following benefits:¹¹
- improved truck turn around times if “paperless” truck processing was achieved
 - the provision of electronic container return and collection receipts – accurate electronic records of transactions
 - elimination of many telephone calls to empty container parks
 - reduction of futile trips as a result of incorrect information, unavailability of container stocks, or unknown redirection of container types
 - timely information on delays caused by breakdowns or weather etc
 - greater visibility of the proposed operational capacities of empty container parks in given time periods
 - improved data availability and integrity
 - would not eliminate truck queues but better forecasts and information on planned truck arrivals and improved truck processing and turnaround times would have a positive impact.

Interested party submissions opposing the notification

- 6.7. The VTA submits that it undertook a survey of its members in July 2010 and that two thirds of respondents were opposed to a system that would introduce a strict

⁹ Shipping Australia Ltd, 24 June 2011, Interested Party Submission.
Westgate Port Services Pty Ltd 22 June 2011, Interested Party Submission.
Port of Melbourne, 28 June 2011, Interested Party Submission.
Containerchain, 29 June 2011, Interested Party Submission.

¹⁰ Speech by the Minister for Ports, the Hon Dr Denis Napthine MP to Shipping Australia Ltd Victorian State Committee Luncheon 2011, 28 July 2011, transcript p.10 and
Dr Hermione Parsons, Institute for Supply Chain and Logistics, Victoria University; Record of Oral Submission, 11 August 2011.

¹¹ Victorian Transport Association, 30 June 2011, Interested Party Submission, p.3.

time slot system at empty container parks. The VTA submits the following concerns regarding the adoption of Containerchain by individual empty container parks:¹²

- it would significantly increase the land side costs of empty containers associated with trade through the Port of Melbourne
- cost efficient movement and handling of containers relies on maximum flexibility in this component of the transport chain
- strict time slotting would result in a requirement to stage almost all empty containers through transport yards leading to average additional costs of between \$100 and \$160 per container from
 - additional lift costs which are estimated to be between \$30 – \$55
 - plus truck waiting time in the yard, storage costs and additional cartage costs for additional truck trip
- the need for additional costs from additional administration staff to handle the system management
- not all container transport operators have the infrastructure in place to conduct the container equipment staging¹³ that would be necessary, for example country carriers. In this case productivity would be drastically reduced and contribute to driver fatigue.

6.8. Secon Carriers Pty Ltd (Secon) supported the implementation of a flexible notification system, but submitted that if a strict time slot system is implemented it would result in significant costs for container transport operators. Secon submitted that additional costs would arise through staging containers and corresponding requirements for additional fuel, yard space, time to load and unload and time lost in travel delays. Secon submits that Containerchain is not the solution to the real issue which is a lack of space, insufficient opening hours and inadequate resources (forklifts) at empty container parks.¹⁴

6.9. Transaction Produce Pty Ltd and other smaller container transport operators submitted that if Containerchain is implemented another person would be required in the office to undertake additional administration work. It claims that the businesses could not afford this additional expense and that they may have difficulty in passing the costs on to their clients. They also submitted that Containerchain would not address equipment or staffing issues at empty container parks. Similarly, Canny Carrying Co, a country carrier, submitted that empty container parks should be required to revise opening hours and provide sufficient parking space for trucks.¹⁵

¹² Victorian Transport Association, 30 June 2011, Interested Party Submission, p.4.

¹³ Staging containers refers to a process whereby containers pass through a container transport operator's depot rather than proceeding directly from 'Point A' to 'Point B'. For example, empty containers may pass through a container transport operator's depot after being collected from an importer, rather than being transported directly from the importer's premises to the empty container park.

¹⁴ Secon Carriers Pty Ltd, 30 June 2011, Interested Party Submission.

¹⁵ KP Group, 30 June 2011, Interested Party Submission.

Canny Carrying Co, 30 June 2011, Interested Party Submission.

Transaction Produce Pty Ltd, 28 June 2011, Interested Party Submission.

- 6.10. The Customs Brokers & Forwarders Council of Australia Inc expressed concern about the imposition of the proposed fee to access empty container parks. The fact that container transport operators currently have no commercial relationship with empty container parks means that they have no influence over the price charged to access the empty container park or to choose a different empty container park.¹⁶

7. ACCC Assessment

- 7.1. In examining the benefits and detriments flowing from the notified conduct, the ACCC has considered all of the information provided by the Applicants and interested parties.

Area of competition

- 7.2. Defining the areas of competition affected by the arrangements which have been notified assists in assessing public benefits and detriment flowing from the arrangements. However, depending on the circumstances, the ACCC may not need to comprehensively define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of this definition.
- 7.3. In respect of the arrangements the subject of these notifications, it is the ACCC's view that its assessment will not be overly affected by the possible variations in precise market definition and accordingly has not formed a view on market definition for the purpose of assessing these notifications
- 7.4. In considering the notifications, the ACCC has identified three relevant areas of competition, being those associated with the supply of:
- storage, cleaning and maintenance of shipping containers
 - logistics software including IT applications for billing, communication and time management
 - road-based container transport services (provided by container transport operators).
- 7.5. The supply of storage, cleaning and maintenance of shipping containers is provided by empty container parks. There are presently eleven empty container park that service the Port of Melbourne, nine of which are notifying parties in this matter. While some shipping lines have an ownership interest in empty container parks, they are generally independent businesses.
- 7.6. With respect to logistics software, Containerchain Pty Ltd is owned by Maximus Pty Ltd. Containerchain resembles the '1-stop' vehicle booking system that is employed at the terminals at the Port of Melbourne which is owned by the terminal operators. Several other providers offered software packages which were assessed by some empty container parks before the Containerchain package was selected.

¹⁶ CBFCA Australia, 29 June 2011, 5 July 2011, and 15 July 2011, Interested Party Submissions.

7.7. There are many providers of road-based container transport services that service the Port of Melbourne. There are several larger providers that operate large fleets of container trucks and represent the majority of container trucks in the area. In addition, there are many smaller operators including owner-driver businesses.

The ‘future-with-and-without test’ or counterfactual

7.8. The ACCC applies the ‘future-with-and-without test’ established by the Australian Competition Tribunal to identify and weigh the public benefit and public detriment generated by conduct for which immunity has been sought.

7.9. Under this test, the ACCC compares the public benefit and anti-competitive detriment generated with and without the proposed conduct. This requires the ACCC to predict the impact on the competitive environment if immunity is not granted. This prediction is referred to as the ‘counterfactual’.

7.10. The ACCC notes that given the regulatory changes outlined in paragraphs 4.6–4.7 the current practice of empty container parks not to actively manage truck congestion is unlikely to continue, and even if Containerchain is not adopted by individual empty container parks, each will introduce some form of management system to comply with their legal obligations. For this reason the ACCC considers that the status quo is not a likely counterfactual.

7.11. A variety of views have been received as to what alternative system would be likely to develop without the proposed conduct. At least one of the Applicants has indicated that if Containerchain is not implemented, the empty container park would be forced to instruct all truck drivers in the queue beyond the point that could be serviced within 30 minutes to move on.

7.12. Several interested parties, particularly container transport operators, have argued that the issue of queues and congestion could be addressed (thereby meeting empty container park’ obligations as loading managers) by:

- extending empty container park opening hours
- further investment in empty container parks, associated equipment and labour
- using web cams to enable the industry to monitor congestion and respond accordingly.

7.13. However the ACCC considers that while some of these options may be an efficient course of action at some empty container parks where underinvestment may be an issue, none of these options is likely to address congestion issues more broadly or relevant obligations under Chain of Responsibility Legislation for the reasons set out below.

7.14. Longer opening hours have been trialled with limited take-up. Further, the issue facing empty container parks is generally not that they can accept a given daily

volume of trucks, but rather that they come at irregular times during the day such that the parks run below capacity for significant periods and then have excess demand at other periods that leads to queues. For this reason, extended opening hours is unlikely to address the issue of queues and chain of responsibility legislation requirements. The ACCC also notes that there are issues with extended opening hours arising from council restrictions and the impact of noise on local residents who are becoming increasingly vocal about the issues caused by the operation of empty container parks.

- 7.15. Further investment may be warranted at some empty container parks where queuing and poor truck turn-around times are often caused by equipment breakdowns or staff shortages. However, the ACCC considers that such investment, while potentially efficient in some circumstances, is unlikely to address the issue faced by empty container parks concerning the spread of truck volumes throughout the day and the lack of warning concerning peak periods of demand.
- 7.16. Finally, while the introduction of web cams may provide a picture of current conditions at empty container parks, it can not provide a forward looking picture of demand. For example, if container transport operators see that an empty park is not busy and sends a fleet of trucks to deliver or collect empty containers, there is no guarantee that the circumstances will not have changed once the trucks arrive. Further, other container transport operators would see the same images and may have a similar response. For this reason, the ACCC considers that web cams are unlikely to address congestion, queuing and loading manager obligations.
- 7.17. The Victorian Government is aware of the issues concerning empty container parks and is supportive of the Containerchain initiative as reflected in a speech recently given by Minister for Ports, the Hon Dr Denis Napthine MP:¹⁷

The creation of Containerchain was the result of cooperation between the shipping, road freight and empty park management industries, with only minimal input from government. Coming as I do from the party that doesn't see government as the solution to everything, it's a process and an outcome I certainly applaud.

- 7.18. The ACCC also notes that empty container parks are ideally located fairly close to or within the port precinct and that desirable and available land for this purpose is scarce. For this and other reasons relating to efficient use of resources, the ACCC considers it unlikely that new empty container parks will be established on a large scale in the near future. In any case, the ACCC considers that the introduction of additional empty container parks would be unlikely to address congestion issues, due to container transport operators not being able to choose which empty container park to attend and will continue to arrive at the empty container park at the time of their choice.
- 7.19. Empty container parks could develop their own in-house vehicle booking system to avoid any potential issues arising under the Act. However, the ACCC notes that this

¹⁷ Speech by the Minister for Ports, the Hon Dr Denis Napthine MP to Shipping Australia Ltd Victorian State Committee Luncheon 2011, 28 July 2011, transcript p.13.

may not be realistic for many empty container parks given their current level of resourcing.

- 7.20. For the reasons set out above, the ACCC considers that intervention of the Victorian Government; the establishment of additional empty container parks in order to reduce congestion; and the in-house development of alternative vehicle booking systems by empty container parks are not likely counterfactuals.
- 7.21. The ACCC considers that the likely counterfactual is a scenario whereby empty container parks instruct truck drivers to move on once queues get to a size where it is no longer likely that they will be serviced within 30 minutes as required by chain of responsibility legislation. The ACCC has applied the ‘future-with-and-without test’ based on this likely scenario.

Public benefit

- 7.22. Generally, competition can be relied upon to deliver the most efficient market arrangements. In circumstances where there are market failures, however competitive markets will not generate efficient outcomes.
- 7.23. The Act recognises that, in certain circumstances, arrangements which restrict competition can deliver public benefits where they address a potential market failure and therefore improve economic efficiency.
- 7.24. The ACCC considers that there are several factors that have resulted in sub-optimal efficiency in the operation of empty container parks and their interaction with container transport operators at the Port of Melbourne. These factors include:
- **supply chain bottlenecks** – during peak periods there are more truck operators trying to access empty container parks (either to collect or deliver containers) than can be serviced at that time. Further, there is no market mechanism to allocate such scarce capacity or prioritise the resulting queue.
 - **disconnection of contractual and operational relationships** – the empty container parks receive revenue from their clients, the shipping lines. However, the empty container parks primary operational relationship is with container transport operators. As a result, empty container parks do not face the full cost of queues and congestion which are in part experienced by container transport operators (and generally passed on to their clients who are generally importers or exporters). The cost of delays and poor service generally does not directly affect the empty container park’ primary clients, shipping lines. Similarly, empty container parks may not have sufficient incentive to adequately invest in labour and machinery on the basis that the investment would increase costs without increasing throughput or revenue, thereby decreasing profits.

The interaction of trucks and empty container parks featured in a publication by the Victorian Freight and Logistics Council’s Freight

Intermodal Efficiency Group titled: *Truck Optimisation Plan: Options Paper, May 2008*. A relevant excerpt is replicated below:¹⁸

Container parks deliver a range of services on contract to shipping lines. They are paid on handling containers in or out and in most cases container storage after 30 free day's storage. Given this throughput-based revenue, there is a disincentive for them to extend hours to receive or despatch the same volume or to increase handling equipment. ... Later opening hours have been trialled by shipping lines with their Empty Container Parks. This has been unsuccessful, either due to insufficient volumes for that one park, or a lack of time for transport operators to adapt to take advantage of the offering. ... [empty container parks] are therefore reducing their operating hours and equipment levels. As one said "I get paid per box, so where is the incentive to open for twelve hours, when I can get paid the same to open for eight?" Some are also cutting the supply of handling equipment to reduce overheads, creating slower turnaround times for trucks.

- **inadequate information** – container transport operators and empty container parks have typically operated with inadequate information. For example, container transport operators do not know the times when empty container parks are likely to be congested and empty container parks typically do not know when large numbers of container trucks are likely to arrive at their parks.
- **environmental costs** – the ACCC also considers that there are likely to be public environmental costs associated with container transport operators waiting in lengthy queues. These costs include pollution and congestion on public roads, which may not fully be reflected in either the empty container parks' or container transport operators' charges.

7.25. The ACCC considers that the sub-optimal efficiency in the supply chain described above provides an indication as to where potential benefits may be realised from intervention or a change to the operation of the supply chain as contemplated by the empty container parks. In this regard, the ACCC has identified the following categories of public benefit that may arise from the proposed conduct:

- improved efficiency, at empty container parks and more broadly
- promotion of efficient investment, at empty container parks and more broadly
- a greater reduction in fatigue related accidents, safer roads and reduced noise pollution around the Port of Melbourne precinct than under the counterfactual.

Improved efficiency

7.26. The ACCC notes that the industry is broadly supportive of measures that will improve the efficiency of the interaction of container transport operators with empty container parks. The ACCC also notes the benefits submitted by the Applicants (see paragraph 5.1), many of which fall under the category of improved efficiency for

¹⁸ Victorian Freight and Logistics Council, May 2008, Truck optimisation Plan Options Paper, p.15.

both the empty container parks and container transport operators. The ACCC considers that efficiency improvements as a result of implementing Containerchain are likely to include:

- an increase in the throughput capacity (as opposed to storage capacity) of empty container parks. This is likely to be achieved through enabling empty container parks to spread the arrival of trucks more evenly throughout the day in order to reduce the level of asset underutilisation. It is also likely that throughput capacity will be increased by streamlining the interaction of container transport operators with the empty container parks and moving to a paperless transaction which is likely to reduce the incidence of error.
- an enhanced ability for empty container parks to plan their work day and better manage their resources including labour and machinery. While the key function of the empty container parks is to load and unload container trucks and to store empty containers, they also provide services which may include cleaning of containers, testing refrigerated containers and maintenance or repairs of containers. Empty container parks typically undertake these secondary functions outside of peak truck arrival times. However, there is currently limited ability for the empty container park to plan this work which can lead to inefficient practices.
- enhanced transparency and data availability. This is likely to improve the operations of the empty container park, container transport operators and potentially other areas of the industry. Empty container parks and shipping lines will have better information about any unmet demand which could be used to support decision making such as whether extended opening hours are warranted. Greater transparency and predictability is likely to benefit planning and logistics decisions of container transport operators leading to more efficient use of their resources. This is likely to result in less time spent in queues with corresponding savings arising from reduced fuel costs, labour costs and as previously noted, a reduction in the environmental costs of queuing. Even if queues are not significantly reduced compared to the counterfactual, container transport operators will have greater certainty and visibility about truck turn-around times at empty container parks due to the information provided through Containerchain which will improve the efficiency of the operation of container transport operator fleets. It is also likely to result in a better outcome for container transport operators by reducing futile trips to empty container parks.
- better integration with the supply chain. The ACCC understands that Containerchain draws on data through the shipping lines as it is collected from vessels arriving in the Port of Melbourne. Similarly, empty container parks will provide more accurate information through Containerchain concerning container stocks. This is likely to benefit the supply chain generally. For example, there have been instances where exporters have required certain quantities of food grade empty containers and have been advised that the containers are available at a certain empty container park.

However, when the exporter's trucks arrive at the empty container park to collect the containers, the empty containers are not available or not accessible.

- 7.27. The ACCC considers that there are likely to be industry-wide benefits from having a single vehicle booking system used at all the empty container parks such as that provided by Containerchain Pty Ltd. A single system is likely to result in greater consistency of data, fewer compatibility issues and less training expense. The ACCC considers that ongoing contestability for the right to supply an integrated vehicle booking system to an empty container park at the Port of Melbourne would limit the ability of the incumbent (Containerchain Pty Ltd) to extract inefficient rents.

Promotion of efficient investment

- 7.28. The ACCC considers that the adoption of Containerchain by individual empty container parks is likely to improve incentives for investment at empty container parks and potentially, more broadly across the supply chain. The primary driver for this change is the provision of information, which in some instances may lead to enhanced competition in the industry with efficiency gains likely to result. Containerchain will increase the visibility of the performance of empty container parks and relevant data will be available to shipping lines, container transport operators, importers and exporters and the empty container parks themselves.
- 7.29. Currently, incentives for empty container parks to invest appear to be limited. As noted above, some empty container parks have actively reduced overheads possibly to the point of underinvestment because they do not appear to have any effect on throughput owing to the disconnect between their commercial relationship with their client, the shipping line, and their operational relationship with the container transport operators. However, as data availability and transparency improves through Containerchain, it may be the case that empty container parks are able to attract more business through better performance and conversely risk losing business through poor performance. In other words, the ACCC considers that Containerchain has the potential to increase competition between empty container parks which may in turn correct disincentives to invest that currently exist.
- 7.30. More efficient utilisation of trucks may also lead to efficient investment incentives for container transport operators. Currently, container transport operators have little knowledge about the queue to expect at an empty container park and the truck turn-around time. While additional staging of containers may need to be factored in to a fleet controller's planning, container transport operators will have a more accurate estimate of the time required for its interaction with the empty container parks which will lead to better information concerning the container transport operator's fleet investment requirements. In this regard, the ACCC notes that the vehicle booking system introduced at the terminals of the Port of Melbourne allowed for greater visibility of information between both stevedore terminals, and enhanced

functionality to help improve truck performance, back-loading opportunities and truck loading ratios.¹⁹

Safer roads and reduced noise pollution

- 7.31. Containerchain is expected to provide a mechanism to assist empty container parks to comply with their obligations as loading managers arising from Chain of Responsibility Legislation as previously described. In the absence of Containerchain or a similar system, empty container parks are likely to instruct container transport operators beyond a certain point in a queue to move on if they do not consider it likely that they will be serviced within 30 minutes. Relative to such a scenario, Containerchain is likely to save the empty container park's resources from walking through the streets and instructing drivers to move on.
- 7.32. Compliance with legal obligations through implementation of Containerchain (relative to compliance achieved by the counterfactual scenario) is likely to reduce driver fatigue, queues and congestion which at present, affects public roads surrounding many empty container parks. This is likely to result in public benefits that may include:
- reduced incidence of fatigue related accidents
 - safer public roads
 - reduced noise pollution, particularly to the benefit of residents near empty container parks.
- 7.33. The realisation of these benefits is contingent on the implementation of Containerchain leading to behavioural change by the container transport operators. If empty container parks adopt the more flexible notification system, container transport operator behaviour may not change to the extent that it would under a more strict time slot system. Should this be the case, the realisation of these benefits would be reduced.

Public detriment

- 7.34. The ACCC has identified several potential detriments that may arise from the proposed conduct. The potential detriments have been categorised as a potential reduction in flexibility for container transport operators or an increase in cost to access the empty container parks and are set out in more detail below.

¹⁹ VTA Media Release: VTA Helps Transport Operators Understand New DP World Vehicle Booking System, 15th June 2010, p. 1.

Potentially reduced flexibility and increased costs for container transport operators

- 7.35. Interested parties have expressed concern about the potential loss of flexibility when moving from the current system where container transport operators are able to turn up as they please, without giving notice, to a system where they are required to nominate their arrival time from a list of available times and strictly adhere to that time.
- 7.36. The ACCC notes that under the notified conduct it is possible for each empty container park to adapt Containerchain to provide for a variety of systems ranging from a simple notification system where container transport operators advise their intentions but are free to arrive as they please to a strict time slot system similar to the vehicle booking system applied at the terminals. The loss of flexibility and resultant costs are more likely to arise where a strict time slot system is adopted and may not occur under a simple notification system.
- 7.37. While some empty container parks have advised the ACCC that they will commence with a simple notification system, the discussion below concerns the loss of flexibility arising from a strict time slot system. The ACCC accepts that the change process may be smoother by commencing with a notification system. However as noted it is unclear whether such a system will lead to the behavioural change required of container transport operators and hence the associated public benefits. This is ultimately a matter to be negotiated between the empty container parks and the container transport operators. The ACCC notes that such negotiations have been in progress for some time and that the industry is in the process of finalising a memorandum of understanding concerning the implementation of Containerchain and associated operational rules.
- 7.38. Costs that are likely to arise from the loss of container transport operator flexibility under a strict time slot system stem from an increased requirement to 'stage containers'. Staging containers refers to a process whereby containers pass through a container transport operator's depot rather than proceeding directly from 'Point A' to 'Point B'. For example, empty containers may pass through a container transport operator's depot after being collected from an importer, rather than being transported directly from the importer's premises to the empty container park.
- 7.39. Container transport operators submit that the additional cost of staging includes:
- a greater number of truck trips leading to more trucks on the road with associated congestion, fuel and environmental costs
 - additional lifting and storage costs.
- 7.40. The exact cost of staging will vary with factors including the distances between the importer, the container transport operator's depot and the relevant empty container park and the number of movements required for the container in passing through the container transport operator's depot. The VTA submits that the cost of staging is likely to be \$100–\$160 per container. The ACCC notes that such costs are material relative to the ~\$5 charge to notify an empty container park using Containerchain.

- 7.41. Nonetheless, the ACCC notes that Containerchain is strongly endorsed by Dr Hermione Parsons, Director of the Institute for Supply Chain and Logistics and others who suggest that container transport operators will benefit from the proposed system. The cost of staging containers for a single truck operation appear high, however the majority of empty container trucks are part of larger fleets with central fleet controllers. Dr Hermione Parsons advised the ACCC that container transport operators are likely to be able to realise operational efficiencies that more than offset the cost of new technology or the cost implied by any requirement to change current operational practices.²⁰ The ACCC understands that such changes may include greater use of the container transport operator's depot as a central hub.
- 7.42. The ACCC notes that any additional staging costs are likely to be affected by the operational model employed by the container transport operator which is ultimately a decision that is best made in the context of commercial incentives. The ACCC also notes that even in the case where a strict time slot system is employed, in certain circumstances container transport operators may be able to book a time slot with limited notice and avoid additional staging costs. The ACCC notes that Containerchain is accessible through portable devices and that an iPhone application has been developed specifically for this purpose.
- 7.43. Notwithstanding the availability of portable devices from which to access Containerchain, the ACCC considers that the potential detriments and additional costs of a strict time slot system may have a more significant impact on smaller operators, particularly those that are unable to take advantage of larger truck fleets and fleet controllers to maximise the efficiency of their operations.

Additional cost to access empty container parks

- 7.44. The proposed conduct will require container transport operators to notify details of planned arrivals and the containers to be dropped off or collected. This notification will be undertaken using Containerchain and will initially cost between \$5 and \$5.50 per container. The actual price to be charged by empty container parks is not part of the notified conduct and may be varied over time by individual empty container park owners.
- 7.45. Currently, there is no requirement for container transport operators to notify regarding truck arrivals at empty container parks. Likewise, there is no charge applied to container transport operators by the empty container parks, whose clients are shipping lines. The relationship between container transport operators and empty container parks is generally described as operational rather than contractual or commercial.
- 7.46. The ACCC considers it likely that the cost of accessing empty container parks using Containerchain will be passed on by container transport operators to other parties in the supply chain and ultimately to the end consumer.

²⁰ Dr Hermione Parsons, Institute for Supply Chain and Logistics, Victoria University; Record of Oral Submission, 11 August 2011.

- 7.47. The ACCC also notes that smaller container transport operators have submitted that they will incur costs associated with additional staffing to manage their interaction with empty container parks. The ACCC notes that the fee to access an empty container park using Containerchain of around \$5 may be less material in the context of the cost of operating a truck in a queue which could be as high as \$1.80 per minute.²¹
- 7.48. The proposed arrangements may mean, at least for a period of time, that larger more efficient container transport operators will have a cost advantage over smaller less efficient operators. While this may mean less efficient operators will lose business to more efficient operators, this is a consequence of competition, not lessening of competition.
- 7.49. The ACCC also notes the submissions of some empty container parks that they will use revenue generated from Containerchain to improve efficiency within their empty container park, and manage the system and associated equipment.²²

Balance of public benefits and detriments

- 7.50. The ACCC considers that the notified conduct is likely to result in significant public benefits arising from improved efficiency across the supply chain, the promotion of efficient investment incentives, and facilitating compliance with legal obligations in a manner that leads to greater benefits compared to the counterfactual. The ACCC notes that notwithstanding reservations held by container transport operators with respect to a strictly applied time slot system, the implementation of more efficient practices at empty container parks is widely supported by government and industry alike.
- 7.51. The ACCC considers the public detriment generated by the arrangements to be the potential loss of flexibility and corresponding increase in costs for container transport operators, as well as the additional costs to access empty container parks. The ACCC also notes that the potential public detriments may have a greater impact on smaller container transport operators relative to the large container transport operators with dedicated fleet controllers and perhaps a greater ability to manage the impact of the changes and pass any cost increases on to their clients.
- 7.52. However, the ACCC also considers that the potential detriments arising from a loss of flexibility for container transport operators may be transitional as they move towards more efficient operating practices afforded by the greater certainty and better information expected as a result of the implementation of Containerchain.
- 7.53. On balance, the ACCC is satisfied that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public.

²¹ Port Melbourne Containers, Interested Party Submission, p. 19.

²² Victorian Container Management Pty Ltd, 15 July 2011, Response to ACCC Request For Further Information, p.4.

8. Conclusion

- 8.1. Having regard to the claims by the Applicants and the issues raised by interested parties, the ACCC is satisfied that the likely benefit to the public from the conduct or proposed conduct in each case will outweigh the likely detriment to the public from the conduct or proposed conduct.
- 8.2. Accordingly, the ACCC does not intend to take any further action at this time.
- 8.3. As with any notification, the ACCC may act to remove the immunity afforded by these notifications at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.