

# **Statement of Reasons**

in respect of notifications lodged by

**Qube Logistics (Aust) Pty Limited & Ors**

Qube Logistics (Aust) Pty Limited and several related bodies corporate propose to provide container pick-up and drop off facilities to container transport operators on condition that container transport operators lodge a notification booking through Containerchain Pty Limited

**Date: 13 August 2013**

**Notification no. N96205 & N96886 – N96892**

**Public Register no. C2012/931**

# Summary

The Australian Competition and Consumer Commission (**ACCC**) has assessed eight third line forcing notifications lodged by Qube Logistics (Aust) Pty Limited and several related bodies corporate (**Qube**) on 12 October 2012 and 31 July 2013. The ACCC is satisfied that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public from the notified conduct and, as such, it does not intend to take any further action at this time.

The ACCC may, at any time, review the notifications and revoke them if it is satisfied that the likely benefit to the public will not outweigh the likely detriment to the public from the conduct.

Among other things, Qube provides handling, cleaning, and maintenance and storage services for the empty containers of shipping lines and provides access to container transport operators picking up or dropping off empty containers at Qube owned or operated facilities.

Qube lodged notifications for conduct that may be third line forcing. Under the notifications Qube will require that, in order to access any empty container park owned or operated by Qube to pick-up or drop off empty containers, container transport operators must first lodge a notification using an online booking system administered by Containerchain Pty Limited (**Containerchain**).

In 2011, the ACCC assessed notifications for similar conduct by empty container parks at the Port of Melbourne. The ACCC found that the use of Containerchain was likely to result in a net public benefit.

In particular, the ACCC considered that the notified conduct was 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.

The ACCC also considered that the notified conduct was 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 considered that the potential detriments arising from a loss of flexibility may be transitional as container transport operators move towards more efficient operating practices afforded by the greater certainty and better information expected as a result of the implementation of Containerchain.

In relation to the current notifications, the ACCC consulted widely, including with interested parties who had experience with the implementation of Containerchain at the Port of Melbourne. Interested parties were generally supportive of Containerchain and generally noted that there had been a reduction in queuing and futile trips as a result of Containerchain.

The ACCC also received submissions from container transport operators operating in NSW who considered that the notified conduct would result in public detriment as a result of the imposition of a notification (booking) fee and likely costs due to staging or double-handling containers. The Australian Trucking Association New South Wales also submits that the conduct is not justified in NSW because Sydney does not have the same problem with lengthy truck queues outside empty container parks that Melbourne has experienced and that no serious supply chain bottlenecks exist in Sydney or any of the other ports relevant to the notification.

However, the ACCC considers that there is evidence to suggest that demand is growing; capacity at empty container parks in NSW is limited; and that existing capacity may be better utilised by implementing a booking system such as Containerchain. Further, the ACCC notes the submission of other transport operators such as Seacon Freight Logistics, who has observed cost savings in its transport operations that offset the notification fee.

The ACCC also notes that the use of scheduling systems such as with Containerchain at empty container parks continues to be broadly supported by government and industry.

Unlike its assessment of the previous notifications concerning similar conduct at the Port of Melbourne, the ACCC considers that in the absence of the notified conduct, Qube would be likely to develop its own in-house booking system to manage the interactions between its empty container parks and container transport operators, avoiding any potential third line forcing issues under the *Competition and Consumer Act 2010*. Consequently, the ACCC's assessment of Qube's notifications is ultimately to test whether a net public benefit arises from implementing Containerchain at Qube's empty container parks against a scenario where Qube develops its own in-house alternative booking system.

The ACCC considers that the notified conduct is likely to result in public benefits arising from:

- a more cost effective system for implementing scheduled access to Qube's empty container parks than the likely alternative
- benefits of compatibility with Qube's existing systems and systems used elsewhere in the industry, providing greater certainty, data transparency and reduced training costs for Qube and its customers.

The ACCC also considers that the notified conduct is unlikely to result in any significant public detriment.

Accordingly, 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 this notification again at any time.

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## Glossary

ACCC	Australian Competition and Consumer Commission
Act	<i>Competition and Consumer Act 2010</i>
Container	A shipping container, used for importing and exporting goods to and from Australia
Containerchain	Containerchain Pty Limited or the Containerchain booking system used by various empty container parks in Australia.
Container transport operator	A person who uses a truck to transport full and/or empty containers between ports, importers, exporters and empty container parks to enable to delivery of shipped cargo.
Empty container park	A park or yard used to receive full containers from and provide suitable empty containers to container transport operators.
Notification fee	The booking fee applicable for each container notification as described at paragraph 9.
Notification system	A system whereby container transport operators are required to notify their anticipated attendance at the empty container park. Some flexibility is maintained before any penalties are applicable for failure to meet their notified time. This is in contrast to a 'time slotting system'.
Qube	Qube Logistics (Aust) Pty Limited and the related bodies corporate as set out at paragraph 4.
Staging	Staging 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.
Time slotting system	A system under which the empty container park sets strict parameters around the arrival time of transport operators in contrast to a 'notification system'.

## Introduction

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.
2. Third line forcing is a type of exclusive dealing conduct which is prohibited by the Act.<sup>1</sup> Generally, third line forcing involves the supply of goods or services on condition that a buyer acquires other goods or services from a particular third party, or a refusal to supply because the buyer will not agree to that condition. Third line forcing conduct is prohibited by the Act regardless of its effect on competition.
3. Lodging a notification with the ACCC for third line forcing conduct provides protection from legal action for the conduct.<sup>2</sup> Once a notification is lodged, the protection for the notified conduct commences after 14 days. The ACCC may revoke a third line forcing notification at any time if it is satisfied that the likely benefit to the public will not outweigh the likely detriment to the public from the conduct.<sup>34</sup>

## Conduct

4. On 12 October 2012, Qube Logistics (Aust) Pty Limited (**Qube**)<sup>5</sup> lodged notification N96205 in respect of possible third line forcing conduct that may breach sections 47(6) and 47(7) of the Act. On 31 July 2013, related notifications were lodged by the following related bodies corporate of Qube:
  - Qube Logistics (Vic) Pty Ltd – N96886
  - Qube Logistics (SA) Pty Ltd – N96887
  - Qube Logistics (Qld) Pty Ltd – N96888
  - Qube Logistics (SB) Pty Ltd – N96889
  - Qube Logistics (NSW) Pty Ltd – N96890
  - Qube Logistics (WA) Pty Ltd – N96891
  - Qube Logistics (WA1) Pty Ltd – N96892.

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<sup>1</sup> Section 47(6) and (7).

<sup>2</sup> Section 93(1).

<sup>3</sup> Section 93(3A).

<sup>4</sup> Before making a decision to revoke a notification section 93(3A) of the Act requires the ACCC to issue a Draft Notice advising the notifying party, and interested parties, that the ACCC intends to revoke the notification.

<sup>5</sup> On the Form G in relation to notification N96205, Qube described the notified conduct as relevant to access to 'any facility owned or operated by Qube (or one of its related bodies corporate)'. However, the ACCC notes that protection from legal action conferred by this notification applies only to Qube Logistics (Aust) Pty Limited. Separate notifications have since been lodged by related bodies corporate that intend to engage in the relevant conduct.

5. Legal protection to engage in the notified third line forcing conduct came into effect on 26 October 2012 for notification N96205. For notifications N96886 – N96892, legal protection comes into effect on 14 August 2013. Legal protection does not extend to any third line forcing conduct that the notifying parties may have engaged in before these dates.
6. For the remainder of this document, references to Qube include the related bodies corporate of Qube set out in paragraph 4.
7. Under the notified conduct, container transport operators seeking to access an empty container park owned or operated by Qube to pick-up or drop off empty shipping containers (containers) are required to lodge a prior notification<sup>6</sup> using a booking system administered by Containerchain Pty Limited (Containerchain). Empty container parks are responsible for the handling, cleaning, repair and storage of empty containers for shipping lines.
8. Qube advises that while container transport operators are required to register with Containerchain.com and comply with the terms of use prior to pick-up or drop off of containers at one of its facilities, there is no agreement between Containerchain and the various container transport operators governing access to Qube's parks. Qube further submits that the Containerchain Website Terms of Use are agreed as part of the carrier access agreement between Qube and the container transport operators.<sup>7</sup>
9. A fee is applicable for each container notification. The fee is \$6.50 for each container notification except for notifications made at Qube's Central and Tydman parks in Western Australia which have a fee of \$5.50.<sup>8</sup>
10. Qube submits that the notified conduct is a technical third line force at most. Qube submits that:<sup>9</sup>
  - It decided to implement a system of scheduled access including the charging of a fee for this access (being the notification Fee).
  - Container transport operators are charged the notification fee by Qube for scheduled access to its empty container parks. The terms and conditions of access to Qube's empty container parks are set out in the relevant carrier access agreements that are between Qube and the transport operator.
  - Containerchain collects the notification fees from transport operators as Qube's agent. However, Containerchain itself does not charge transport operators a fee.

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<sup>6</sup> A "notification" is the process of indicating a truck's estimated time of arrival at a participating empty container park.

<sup>7</sup> Qube response to ACCC questions of 24 January 2013, p.1.

<sup>8</sup> Qube response to interested party submissions, 20 February 2013, p.5.

<sup>9</sup> Qube submission of 13 March 2013, p.2.

## Previous Notifications

11. In May and June 2011, nine unrelated operators of empty container parks around the Port of Melbourne lodged notifications N95413, N95450-N95456 and N95465 for conduct that may be third line forcing (previous notifications).
12. Under the previous notifications, each of the empty container park operators sought protection for an arrangement with Containerchain to implement the Containerchain Logistics System. Similar to the current notification, container transport operators that wish to drop off or pick-up a container from the parks are required to pre-book their transaction via the nominated website, which includes entering relevant details into Containerchain's website ([www.containerchain.com](http://www.containerchain.com)). The container transport operator must have an account with Containerchain and must pay a booking fee. The system will then allocate a timeslot to the container transport operator.
13. The ACCC consulted broadly on these notifications and received 23 public submissions from interested parties. The notifications were allowed to stand in August 2011.

## Background

### Notifying parties

14. Qube, including its related bodies corporate, is Australia's largest provider of integrated port logistics services. It operates in New South Wales, Queensland, South Australia, Victoria and Western Australia.<sup>10</sup>
15. Qube operates services covering road and rail transport, warehousing and distribution, container parks and related services, and intermodal logistics hubs including rail terminals and international freight forwarding. Qube's services include the operation and management of facilities across Australia which allow for the pick-up, drop off, storage and maintenance of empty containers. Currently, Qube operates the following empty container parks:
  1. Qube Port Botany Empty Container Park (New South Wales)
  2. Qubelink Port Botany (New South Wales)
  3. Qube Central (Western Australia)
  4. Qube Irene (Western Australia)
  5. Qube MCD (Western Australia)
  6. Qube Tydeman (Western Australia)
  7. Qube Brisbane Port Empty Park (Queensland)
  8. Dynon Empty Park (Victoria)
  9. Outer Harbour Empty Park (South Australia)
16. Qube provides handling, cleaning, and maintenance and storage services for the empty containers of shipping lines and provides access to container transport

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<sup>10</sup> <http://www.qube.com.au/logistics/services>



operators picking up or dropping off empty containers at Qube owned or operated facilities.

### **Container Transport Industry**

17. The container transport industry manages the movement of shipping containers into and out of Australia. Empty container parks have areas for storage, maintenance and pick-up and drop off of shipping containers.
18. 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' or 'stack run', and is required as part of the management of the import-export imbalance at many Australian ports. 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.
19. In its assessment of the previous notifications, the ACCC found that in the absence of a booking or scheduling system, container transport operators would arrive at irregular times and queues of vehicles could form at any time of the day. As a result, empty container park operators would not usually know when they will face congestion and/or reach full capacity at the facility.
20. Similarly, the ACCC found that the lack of monitoring and communication that existed prior to the introduction of booking allocation systems such as Containerchain resulted in a lack of transparency for container transport operators, who faced vehicle underutilisation and fatigue-related accidents as a result of extended waiting periods in queues at empty container parks.
21. Following the Road Legislation Further Amendment Act 2007, all State and Territory Governments implemented the National Heavy Vehicle Driver Fatigue Policy to include provisions relating to fatigue management of truck drivers. This Chain of Responsibility Legislation means that various parties in the supply chain will share responsibility for managing road fatigue with truck drivers. The reforms aim to improve compliance outcomes in relation to road safety, infrastructure and the environment, as well as minimising the adverse impacts of road transport on communities. Pursuant to the 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.

### **Containerchain**

22. Containerchain is a web-based information and visibility portal for the container logistics community. It aims to provide a single window for all participants involved in the industry to view and transact empty container movements, thereby improving the overall efficiency of these movements and reducing costs for all port users.<sup>11</sup>
23. Containchain aims to provide:

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<sup>11</sup> Containerchain website: <https://www.containerchain.com/About.aspx>, accessed 8 March 2013.

- a paperless interaction with transport operators
  - improved empty park truck queue management to reduce truck queuing and improve safety
  - the proactive management of empty containers
  - real time visibility on export release availability
  - visibility on alternate empty park return locations
  - automated demurrage tracking
  - real time container and release number search.
24. Containerchain has been endorsed by Shipping Australia, the Institute for Supply Chain and Logistics, Transport Certification Australia and others. The Containerchain system is intended to increase throughput capacity, improve efficiency and enhance transparency and data availability for better integration within the supply chain.
25. Around 30 empty container parks in New South Wales, Queensland, Victoria and Western Australia are currently using the Containerchain system.<sup>12</sup>

## Applicant's submission

### Public benefit

26. Qube submits the likely public benefits from the implementation of Containerchain to be:
1. Industry-wide benefits through a single vehicle booking system
  2. Increased throughput capacity
  3. Data transparency and availability
  4. Promotion of competition and efficient investment.
27. It submits that, absent a notification system like that provided by Containerchain, a mismatch between the schedules of empty container parks and those of container transport operators would continue, resulting in congestion and delays.
28. Qube's claims as to the benefits arising from the notified conduct are detailed below.

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<sup>12</sup> **NSW:** MCS Cooks River, MCS Banksmeadow, Qube Port Botany Empty Container Park, Qubelink Port Botany, Tyne ACFS Port Botany, Tyne MT Movements, Tyne St Peters. **Queensland:** QUBE Logistics Brisbane Port Empty Park (BPEP), Chalmers Brisbane ECP, Tyne Brisbane. **Victoria:** Allied Container Services ('Allied'), ANL Container Park, CC Containers, Chalmers Industries ('Chalmers'), Container Logistics, Melbourne Container Park ('MCP'), Melbourne Reefer Services ('MRS'), Oceania Container Services ('OCS'), Port Melbourne Containers ('PMC'), Victorian Container Management ('VCM'), Patrick Port Logistics Coode Road. **Western Australia:** Intermodal Container Services ('ICS'), Intermodal Container Logistics ('ICL 1'), Intermodal Container Logistics ('ICL 2'), Qube Central, Qube Irene, Qube Tydeman, Qube MCD, Sea Containers.

### *Industry-wide benefits through support for a single vehicle booking system*

29. Qube submits that a vehicle booking system is needed to enhance the efficiency and operation of its facilities. Qube has chosen an external provider rather than an in-house solution. Qube submits that the use of an external provider with the relevant experience and expertise allows the system to be provided at a lower cost and with greater potential efficiency gains for container transport operators who would often use many different empty container parks.
30. Qube notes the ACCC's findings with respect to the previous notifications, that the use of a single industry-wide vehicle booking system is likely to result in "greater consistency of data, fewer compatibility issues and less training expense" by Qube and other empty container facility operators. Container transport operators will also be able to engage with one interface through a single corporate account. For example, integration through the Containerchain system enables empty container facilities to communicate any operational issues or container status changes with container transport operators who have impending bookings.
31. Qube submits that implementation of an industry-wide system also means better integration with the supply chain more broadly. For example, the Containerchain system draws on data through the shipping lines as it is collected from vessels. Similarly, empty container parks will be able to provide more accurate information through the Containerchain system concerning container stocks.
32. Qube notes that following its successful implementation at empty container facilities in Victoria, the Containerchain system was implemented at other empty container park facilities across Australia.

### *Increased throughput capacity*

33. Implementation of the Containerchain system at empty container parks owned or operated by Qube will enable container truck arrivals to be managed more efficiently, reducing queues and congestion by "levelling" throughput and spreading truck arrivals more evenly throughout the day. Specifically, managing queues is possible through the Containerchain system by matching gate capacity (i.e. truck arrivals) to yard capacity (i.e. the fork lifts and other equipment and personnel required to service the transport operators) at any given time, which makes scheduling generally more predictable. The notification system provided by Containerchain will enable the container park operators or owners to know and plan for what is coming and enable the container transport operators know and plan the operation of their fleet such that empty container services can be provided effectively and efficiently.

### *Data transparency and availability*

34. Qube submits that the data made available through the Containerchain system is likely to improve the operation of the supply chain generally, including the operation of empty container parks and facilities, container transport operators, and shipping lines. For example, Fremantle Ports notes the efficiency gains that could be obtained in the provision of container related services if the relevant facilities had information of industry needs in advance.

### *Promotion of competition and efficient investment*

35. Qube submits that greater data visibility through use of the Containerchain system is also likely to trigger greater competition in the industry generally, which may also lead to more efficient investment.
36. Qube submits that empty container parks are likely to improve performance, including through investment, where data is available about the performance of other empty container facilities and the industry generally. Qube explains that this is because it introduces a greater risk of losing business through the customer's ability to judge the comparative performance of each empty container service provider. Similarly, information regarding expected queues at relevant facilities may support a better understanding of the investment planning requirements of container transport operators in relation to their fleets.

### **Public detriment**

37. Qube submits that the notified conduct will not result in any public detriment.

## **Interested party submissions**

38. On 13 November 2012, the ACCC invited submissions from a variety of interested parties in relation to the notified conduct<sup>13</sup>, namely:
  - industry participants, including container transport operators, port authorities, and companies that use shipping containers
  - industry representative associations, and
  - government agencies.
39. The ACCC received public submissions from the following interested parties:
  - Associated Customs and Forwarding Services
  - the Australian Trucking Association New South Wales (ATA NSW)
  - BCQ Logistics
  - Containerchain Pty Ltd
  - Dr Hermione Parsons, Institute for Supply Chain and Logistics
  - JJL Transport
  - PG & S Hammond Pty Ltd
  - Secon Freight Logistics

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<sup>13</sup> The ACCC consulted only in relation to notification N96205. However, the submissions received are considered relevant to the conduct described in notifications N96886–N96892 which is substantially similar.

- Shipping Australia Limited
  - the Victorian Transport Association (VTA), and
  - Western Australian Port Operations Task Force.
40. Shipping Australia is the peak industry body for Australian and international ship owners, operators and agency companies involved in bulk, tanker, general cargo shipping, container, passenger and tramp trades. It supports the notification and submits that it will not result in any public detriments.
  41. Shipping Australia submits that its member lines contract with the empty container parks in terms of receiving containers from importers and for the delivery of empty containers to exporters for packing. Those members are involved with around 70% of Australia's container trade.
  42. Shipping Australia submits that, from time to time, there have been serious problems with trucks queuing outside empty container parks, especially in New South Wales, Victoria and Western Australia. It submits that the notified conduct will result in public benefits in the form of increased efficiency by reducing trucks queuing outside empty container parks. Shipping Australia also submits that most of the empty container parks in Victoria operate under a similar system and this has increased transparency in operation and boosted empty container park productivity for the benefit of all users.
  43. Finally, Shipping Australia submits that the proposed conduct will have no detrimental effect on competition.
  44. The Australian Trucking Association New South Wales (ATA NSW) raised concerns about the notification. It submits that the notified conduct will result in significant public detriments in NSW, which will outweigh any benefits from the conduct.
  45. The ATA NSW is concerned that setting of the booking fee is not transparent. In particular, it is concerned that Qube has not explained how the fee has been calculated, how it will be split between Containerchain and Qube, what profits these companies will make from the imposition of a booking fee, or why the booking fee will be 20% higher in Sydney than in Melbourne. It submits that Qube did not provide sufficient information about the costs of making each booking or how the booking system will operate in practice.
  46. The ATA NSW submits that some of the information provided to the ACCC is inaccurate, and the current notification cannot be compared to the previous notifications in relation to similar conduct at the Port of Melbourne.<sup>14</sup>
  47. Further, the ATA NSW submits that the conduct is not justified in NSW because Sydney does not have the same problem with lengthy truck queues outside empty container parks that Melbourne has experienced. It submits that no serious supply chain bottlenecks exist in Sydney or any of the other ports relevant to the notification.
  48. ATA NSW submits that the conduct will generate public detriment by increasing costs for container transport operators, which will be passed on to consumers.

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<sup>14</sup> See the description under the heading 'Previous Notifications'.

49. Four NSW container transport operators Australian Customs and Forwarding Services, BCQ Logistics, JJL Transport and PG & S Hammond Pty Ltd, supported the ATA NSW's submission, providing submissions in similar terms.
50. The container transport operators also submitted that the notified conduct would be likely to increase 'staging'<sup>15</sup> costs for container transport operators, resulting in a significant burden on the financial viability of smaller trucking companies, and with a more significant effect than was the case when similar conduct was introduced in Melbourne. The container transport operators submitted that small and medium sized container transport operators would not be able to pass the additional costs of staging from the notified conduct on to consumers and those container transport operators would be forced out of business.
51. Secon Freight Logistics submitted that the notified conduct was likely to result in benefits to the industry similar to those already achieved in Melbourne, including improved transparency and information flow and improved efficiency. However, Secon Freight Logistics was concerned that the claimed benefit of a paperless system has not yet been realised in full and some empty container parks may reduce flexibility by using the Containerchain system as a time slotting system rather than a notification system.<sup>16</sup> Secon Freight Logistics also noted it had experienced only a minimal increase in administration costs and that these costs were offset by the efficiency gains that the Containerchain system has provided to the company.
52. The ACCC sought a submission from the Victorian Transport Association (VTA) to understand how the operation of the Containerchain system had operated in Melbourne over the past two years. The ACCC notes, prior to the introduction of the Containerchain system at empty container parks in Melbourne, the VTA had previously raised concerns about those arrangements. The VTA previously submitted that it broadly supported the notified conduct, but also had concerns about the potential effect of the conduct in the future, given that the legal protection afforded to a third line forcing notification remains in place until the notification is withdrawn or revoked.
53. With respect to the current notifications, the VTA submits that the operation of the Containerchain system is likely to result in public benefit. In its experience with the operation of the Containerchain system in relation to Melbourne-based empty container parks, the VTA submits that the introduction of the Containerchain system eliminated queues at the Port of Melbourne, particularly at the better managed empty container parks. It also significantly reduced futile truck trips and increased the visibility of container movements and information exchange. The VTA submits that the Containerchain system has encouraged innovation and efficiency savings in the operation of empty container parks. Implementation of the Containerchain system has improved reliability for container transport operators operating in Melbourne and has the potential to further improve overall reliability in the industry.

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<sup>15</sup> Staging 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.

<sup>16</sup> In this instance, the ACCC understands 'time slotting' to refer to a system under which the empty container park sets strict parameters around the arrival time of transport operators in contrast to a 'notification system' whereby transport operators are required to notify their anticipated attendance but some flexibility is maintained before any penalties are applicable.

54. The VTA submits that the Containerchain system is still in its infancy at many empty container parks around Australia. The VTA submits that, empty container parks are continually learning from the experience of its implementation and improving the process, including by increasing empty container park capacity, streamlining the truck arrival verification process and facilitating paperless trading. The VTA also submits that while the Containerchain system has resulted in new administrative tasks for container transport operators, it has also reduced previous administrative tasks.
55. The VTA submits that another benefit of the Containerchain system (and the notified conduct) is that container transport operators now have contracts directly with empty container parks. This contractual relationship allows container transport operators to demand service from empty container parks where before they had less ability to do so.
56. However, the VTA submits that there were also negative aspects associated with the empty container parks' introduction of the Containerchain system in Victoria. The VTA submits that if the notification system becomes a strict time slotting system, then the costs to container transport operators associated with the notified conduct will increase significantly. The VTA noted that the empty container transport chain requires accommodation of flexibility wherever possible to allow for agile vehicle fleet management.
57. Containerchain submits that it has attempted to consult with the industry and with container transport operators in particular, including by conducting training in Brisbane, Fremantle and Sydney. Containerchain submits that empty container parks have traditionally been the "poor cousin" of the container logistics supply chain and that they operate on thin margins, and often lack the resources to implement technology solutions due to cost. As a result, prior to the implementation of Containerchain there were many problems at empty container parks in relation to information and visibility concerning available capacity. In this regard Containerchain submits that its system is primarily a data and visibility system rather than a booking system. It provides visibility to container transport operators and enables them to see the movements of containers and capacity of empty container parks. Containerchain also provides the benefit of a platform that creates paperless and automated operations.
58. Containerchain does not determine the notification fees that Qube (or any other empty container park) charges. It simply contracts the depot, provides a technology platform and is an agent for the collection of the notification fees. Containerchain submits that the savings on truck operating costs are greater than the cost of the notification fees.
59. Dr Hermione Parsons, Director of the Institute for Supply Chain and Logistics, Victoria University, strongly supports the use of a notification system such as Containerchain, submitting that it is likely to result in significant efficiency benefits to the entire supply chain. Dr Parsons submits that the ACCC should view the matter as a whole of industry initiative for an industry that will eventually be run entirely on an electronic exchange. The reliability of the supply chain is critical and the industry needs a system that makes all parties accountable and aware. Dr Parsons submits that the implementation of Containerchain is likely to result in positive effects on urban planning, carbon minimisation and safety concerns.
60. Dr Parsons submits that historically, a critical inefficiency in the Australian supply chain has been the outdated management of empty container parks which have been low-margin businesses, with little investment in IT and infrastructure. The Containerchain

system will provide the most important productivity gains for the industry in recent history and this has already been demonstrated in Melbourne. The system makes the supply chain more efficient.

61. Dr Parsons notes that the Containerchain system is a notification system which is important for orderly business. That a system like this is now being used and honoured by industry means the question of penalty charges and a time slot system for empty container management is not really relevant. Both time slot systems and notification systems are able to provide reliability for parties involved in the supply chain, but the current notification system is improving industry performance and working effectively.
62. Dr Parsons notes that the reliability of the supply chain is critical and the industry needs a system that makes all parties accountable and aware. Previously trucks turned up unannounced and therefore the empty park had no way to effectively plan their resource allocation to ensure truck queues were serviced quickly and efficiently. Trucks that are delayed are an underutilised asset and add cost to the supply chain and impact negatively on fatigue management.
63. The Western Australia Port Operations Task Force (**WAPOTF**) supports the Containerchain system and notes that it has resulted in benefits in the form of improved efficiency and flexibility from the introduction of off-peak bulk runs, the extension of operating hours and moderation of peaks and troughs in container transport operator arrivals throughout the day. WAPOTF submits that the queuing issues that Fremantle Port experiences in previous years' peak seasons have not occurred to the same extent this recent Christmas peak season. Less queuing as a result of Containerchain has boosted container transport operator productivity.
64. WAPOTF also submits that the use of the single Containerchain system for all empty container parks in WA has resulted in greater consistency of data, fewer compatibility issues and less training expense for Qube, other empty container parks and the transport industry as a whole. The single system also provides an administrative benefit to container transport operators.
65. However, WAPOTF submits that if Qube were to increase notification fees without consultation with the wider supply chain and with no attempt to relate the increase to a requirement of operation of the Containerchain system and no attempt to recoup increased costs from the shipping lines, then the conduct may result in public detriment. WAPOTF also submits that the supply chain would severely suffer if Qube were to use the Containerchain system to apply a strict booking system (often referred to as time slotting).
66. Copies of all public submissions received by the ACCC are available on the public register at [www.accc.gov.au/exclusivedealingregister](http://www.accc.gov.au/exclusivedealingregister).

## **ACCC Assessment**

67. The ACCC has examined the benefits and detriments flowing from the notified conduct in accordance with the test set out in section 93(3A) of the Act. In doing so, the ACCC has considered all of the information provided by Qube and interested parties.



## Relevant areas of competition

68. Defining the areas of competition affected by the notified third line forcing conduct assists the ACCC to assess the likely public benefits and detriments. However, depending on the circumstances, the ACCC may not need to precisely define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of this definition.
69. Qube submits that the relevant market likely to be affected by the notified conduct is the market for the supply of storage, cleaning and maintenance of shipping containers; logistics software including IT applications for billing, communication and time management; and road-based container transport services (provided by container transport operators). Qube also submits that rail-based container transport services (provided by container transport operators) will also likely be relevant to this notification.
70. In relation to these notifications, the ACCC considers that its assessment is unlikely to turn upon precise market definition. Accordingly, it has not formed a concluded view on market definition for the purpose of assessing this notification.
71. However, the ACCC considers that the areas of competition relevant to the notified conduct are likely to be narrower than those submitted by Qube. In particular, the ACCC notes that competition for the supply of container transport (primarily by truck) and storage facilities is likely to be localised around each of the ports at which Qube or its affiliates have empty container parks. These ports are located in Sydney, Melbourne, Brisbane, Perth and Adelaide.

## The ‘future-with-and-without’

72. To assist in its assessment of the notified conduct, the ACCC compares the likely future with the conduct that is notified to the likely future without the conduct which is notified.
73. Qube did not make an explicit submission on the likely future with and without the notified conduct. However, Qube submits that its decision to implement a system of scheduled access to its empty container parks is separate to the notified conduct (being the use of Containerchain to administer the access system). Further, Qube submits that the decision to charge a notification fee to container transport operators is also separate to the decision to engage Containerchain to administer the access system.
74. In its assessment of the previous notifications (outlined at paragraphs 11–13) the ACCC considered that as a result of chain of responsibility legislation<sup>17</sup>, the status quo was an unlikely scenario in the absence of the notified conduct. After considering a range of alternatives, the ACCC ultimately concluded that the most likely future without the notified conduct was ‘a scenario whereby empty container parks instruct truck

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<sup>17</sup> As noted at paragraph 21 empty container parks are classified as ‘loading managers’ and have associated obligations under Chain of Responsibility Legislation.

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'.<sup>18</sup>

75. The ACCC also considered whether the in-house development of alternative vehicle booking systems by empty container parks was likely given that could avoid any potential issues arising under the Act. However, the ACCC concluded that 'this may not be realistic for many empty container parks given their current [low] level of resourcing'.<sup>19</sup> The ACCC's assessment was made in relation to nine empty container parks, each with different ownership and varying levels of resourcing.
76. However under the current notifications Qube owns and operates nine empty container parks. In this case the system development costs incurred by Qube in creating its own system for scheduled access could potentially be spread across nine empty container parks.
77. The ACCC notes that Qube's empty container parks are located at various ports around Australia including the Port of Melbourne, Port Botany, Brisbane and Fremantle. The ACCC also notes that the extent to which empty container parks are reaching their capacity is likely to vary between ports. However the ACCC understands that congestion is increasingly becoming an issue at each of these locations. In this regard, the ACCC also notes Qube's submission concerning growth trends and that as worldwide trade and shipping increases, the number of empty containers will also increase.<sup>20</sup>
78. The ACCC also notes Qube's submission that it '...has had specific experiences where port authorities have requested it to implement a notification system in its empty container parks in response to congestion. For example, the Freemantle Port Authority requires Qube to implement and use a booking system as a condition of its empty container park lease'.<sup>21</sup>
79. Qube submits that it has made a commercial decision to implement a system of scheduled access to its empty container parks and that the anticipated benefits of scheduled access include:
  - knowledge of the number of container transport operators planning to visit Qube's parks at a particular time
  - knowledge of the number and type of containers required, which will enable Qube to plan its stock levels and efficiently allocate its workforce and equipment to meet demand
  - enabling Qube to more effectively accommodate users of its parks by moderating the peaks and troughs in day to day operations, reducing queuing and reducing the incidence of futile trips by transport operators
80. As noted above, chain of responsibility legislation conveys certain obligations on Qube to manage queuing at its empty container parks. Given the benefits noted above that

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<sup>18</sup> ACCC Statement of Reasons in respect of notifications lodged by Port Melbourne Containers Pty Ltd & Ors, 26 August 2011 (ACCC Statement of Reasons), paragraph 7.21.

<sup>19</sup> ACCC Statement of Reasons, 26 August 2011, paragraph 7.19.

<sup>20</sup> Qube response to interested party submissions, 20 February 2013, p.1.

<sup>21</sup> Qube response to ACCC information request of 24 January 2013, p.2.

support Qube's commercial decision to implement scheduled access to its empty container parks, in the absence of the notified conduct where operators are required to use Containerchain, the ACCC considers that Qube would be likely to develop its own substitute vehicle booking system to provide scheduled access to its parks. Under such a scenario, the ACCC also considers it likely that Qube would also seek to introduce a fee to cover the costs of developing and administering its own system.

81. While the ACCC considers it less likely, an alternative scenario may be that Qube seeks to fulfil its obligations under chain of responsibility legislation without a formal booking system. This scenario would be akin to the scenario considered most likely in the ACCC's consideration of the previous notifications in 2011 where the empty container parks were operated by unrelated parties.

### **Public benefit**

82. 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.
83. The Act recognises that, in certain circumstances, arrangements that restrict competition can deliver public benefits for example, where they address a potential market failure and therefore improve economic efficiency.
84. The ACCC notes that the public benefits described below include benefits that may be attributed to the introduction of a booking system generally as well as benefits that are specific to the implementation of Containerchain. However, given the ACCC's findings with respect to the likely future without the conduct at paragraph 80, only those benefits that are specifically attributable to the implementation of Containerchain are relevant to the ACCC's assessment in this instance.
85. In its assessment of the previous notifications, the ACCC described the relevant market failures as:<sup>22</sup>
  - supply chain bottlenecks – during peak periods there are more truck operators trying to access empty container parks than can be serviced at that time. Further, there is no market mechanism to allocate park capacity or prioritise the resulting queue.
  - disconnection of contractual and operational relationships – traditionally, empty container parks' predominant source of revenue has been the shipping lines. However, the 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 transport operators (and generally passed on to their clients who are generally importers or exporters). The cost of delays or poor service generally does not directly affect the empty container parks' primary client. 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.

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<sup>22</sup> See the ACCC's previous assessment for further detail – ACCC Statement of Reasons, 26 August 2011, paragraphs 7.24 – 7.25.

- inadequate information – without a system such as Containerchain, container transport operators do not know the times when empty container parks are likely to be congested and the parks do not know when large numbers of trucks are likely to arrive at their parks or what equipment will be required to service the trucks.
  - environmental costs – truck queues at empty container parks create pollution and congestion on public roads, which may not be fully reflected in either the empty container parks' or the container transport operators' charges.
86. In turn, the ACCC identified a series of public benefits that would be likely to arise as a result of addressing the market failures:
- improved efficiency at empty container parks and more broadly
  - promotion of efficient investment at the parks and more broadly
  - reduction in fatigue related accidents, safer roads and reduced noise pollution than without the notified conduct.
87. As previously noted, the ATA NSW submits that the current notifications cannot be compared to the previous notifications in relation to similar conduct at the Port of Melbourne and that the conduct is not justified in NSW because Sydney does not have the same problem with lengthy truck queues outside empty container parks that Melbourne has experienced. It submits that no serious supply chain bottlenecks exist in Sydney or any of the other ports relevant to the notifications. However, the ACCC considers that the market failures described above are applicable to many Australian ports including Port Botany in NSW. In turn, the ACCC considers that public benefits will result from addressing applicable market failures.
88. For example, Shipping Australia submits that, from time to time, there have been serious problems with trucks queuing outside empty container parks, especially in New South Wales, Victoria and Western Australia.<sup>23</sup> Further, Qube notes in its response to interested party submissions that the NSW Government has established the Port Botany Landside Improvement initiative and that this initiative may include a review of empty container parks. Qube also notes that its empty container parks in Sydney have been operating at close to capacity in recent times.<sup>24</sup>
89. In these circumstances, the ACCC considers that the introduction of a booking system is likely to address the market failures described above, in turn also resulting in public benefits also set out above.
90. Qube submits that 'even though the Containerchain portal is in the early stages of implementation, Qube has seen significantly reduced queues at its facilities' and that 'the system smooths out the spikes in demand, so that those who can come slightly earlier or later do so'. Qube also submits that there has been a significant reduction in futile trips for container transport operators.<sup>25</sup>

<sup>23</sup> Shipping Australia submission, 28 November 2012, p.2..

<sup>24</sup> Qube response to interested party submissions, 20 February 2013, p.1. Also see pages 7 and 9 of the same document.

<sup>25</sup> Qube response to interested party submissions, 20 February 2013, pp.9–10.

91. The ACCC notes the VTA's submission (summarised at paragraphs 52–56) supports Qube's claims. In brief, the VTA submits that its experience with the operation of the Containerchain system in relation to Melbourne-based empty container parks, is that it has eliminated queues at the Port of Melbourne and has significantly reduced futile truck trips and increased the visibility of container movements and information exchange. The VTA's submission is particularly notable because it also represents container transport operators and held similar concerns to the ATA NSW prior to the implementation of Containerchain at the Port of Melbourne.
92. However, the ACCC considers that the preceding benefits are likely to arise from the introduction of a system to implement scheduled access and from the increased visibility of operations for the empty container parks and container transport operators in particular. That is, in theory, these benefits may be realised by the introduction of a system of scheduled access, developed in-house by Qube, rather than necessarily being dependent on the introduction of a third party system such as Containerchain.
93. While the benefits discussed above may largely be attributed to the introduction of a system for scheduled access more generally, the ACCC also notes Qube's submission with respect to its decision to use Containerchain to provide scheduled access to its empty container parks:
- The Containerchain portal was already in use by the industry and Containerchain had the relevant expertise and capability necessary to allow Qube to implement a system to more efficiently operate its facilities at a lower cost than the development of an in-house notification solution.<sup>26</sup>
  - Containerchain was compatible with the operating system used in Qube's facilities.<sup>27</sup> Qube submits that it was a foundation customer of the MAXimas software, which, to some degree, led to the development of the Containerchain web-based portal.
  - The fact that Containerchain had already been implemented by other parks meant there would be greater consistency of data, fewer compatibility issues and less training expense compared to other solutions.<sup>28</sup>
94. The ACCC accepts that the requirement to use the Containerchain system is likely to result in public benefits that reflect the reasons identified by Qube for choosing Containerchain. That is, the ACCC considers that the notified conduct is likely to result in public benefits in the form of:
- a more cost effective system for implementing scheduled access to Qube's empty container parks than the likely alternative
  - a system that does not require further time or expense to develop, as Containerchain is available now
  - benefits of compatibility with Qube's existing systems and systems used elsewhere in the industry, providing greater certainty, data transparency and reduced training costs for Qube and its customers. This includes the increased

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<sup>26</sup> Qube response to ACCC information request of 24 January 2013, Attachment A, p.1.

<sup>27</sup> Qube response to ACCC information request of 24 January 2013, Attachment A, p.4.

<sup>28</sup> Qube response to ACCC information request of 24 January 2013, Attachment A, p.4.

efficiency in the container transport operators' scheduling as a result of using the same system at many empty container parks and the subsequent availability of data through Containerchain.

### **Public detriment**

95. In its assessment of the previous notifications the ACCC identified potential public detriments that may arise from the notified conduct as:
- potentially reduced flexibility and increased costs for container transport operators
  - additional cost to access empty container parks.
96. In addition, the ACCC has considered whether any public detriment is likely to arise as a result of a potential loss of competition in the supply of logistics software. Each of these potential detriments are considered below. However, as the ACCC's assessment of the most likely future without the notified conduct is that Qube would develop its own substitute system to implement scheduled access to its empty container parks, it is only the last of these potential detriments that is directly relevant to the ACCC's current assessment of net public benefit.

#### *Potentially reduced flexibility and increased costs to access empty container parks*

97. Qube submits that despite the arguable decrease in flexibility for a particular container transport operator, the notified conduct will result in more efficient operations overall.<sup>29</sup> Qube submits that, to its knowledge, notification through the Containerchain system has not resulted in any relevant decrease in flexibility.<sup>30</sup>
98. However, interested parties including the ATA NSW, VTA and Secon have noted that the conduct is likely to cause significant reduction in flexibility for container transport operators if it moves from a notification system to a strict time slotting system. The ACCC notes that to date, it is generally accepted that Containerchain has generally not been implemented as a strict time slotting system.
99. Some interested parties submit that the cost of notification fees for using the Containerchain system to pick-up or drop off containers at a Qube empty container park will significantly increase the costs of moving containers. These costs may be passed, through the supply chain, to the end consumer. These interested parties submit that the increase in cost is unjustified and is a significant public detriment. However other interested parties are less confident of their ability to pass the cost on to their customers.
100. The ATA NSW submits that given the highly fragmented nature of the market for the movement of empty containers by road in Sydney, interested parties from NSW submit that "staging" is likely to have a much more significant effect on the financial viability of smaller trucking companies than was the case in Melbourne. The increased costs associated with staging will result in additional costs which the truck operator will have to either pass onto the end consumer in the form of high prices or absorb in their existing profit margins.

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<sup>29</sup> Qube submission of 13 March 2013, p.3.

<sup>30</sup> Qube response to ACCC information request of 24 January 2013, p.6.

101. In relation to the operation of the notified conduct in Victoria, Secon submits that using the Containerchain system has added administrative costs to its operations. However, these costs have been less than the equivalent of one full time equivalent employee's salary. Secon also submits that the increase in administrative costs from using the Containerchain system has been offset by cost savings that Secon has made as a result of using the Containerchain system under the notified arrangements.<sup>31</sup>
102. The ACCC previously accepted that any loss of flexibility and any subsequent increase in costs would be likely to 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.<sup>32</sup> The ACCC also noted that 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 and that while this may mean less efficient operators will lose business to more efficient operators, this is a consequence of competition, not lessening of competition.<sup>33</sup>
103. The ACCC considers that the introduction of scheduled access is likely to increase costs, due to the notification fees and potentially from an increased incidence of staging. While there may be costs from requiring container transport operators to use Containerchain, these costs are likely to be offset by efficiencies such as reduced queuing at empty container parks. The ACCC also notes that the application of scheduling systems at empty container parks such as with Containerchain continues to be supported by government and industry.
104. Further, the ACCC considers it most likely that Qube would develop its own system of scheduled access with a corresponding notification fee in the absence of the notified conduct. Accordingly, the ACCC does not consider the potential public detriments described above are attributable to the notified conduct in this instance.

*Reduced competition for the supply of logistics software*

105. It could be argued that Qube's decision to implement Containerchain at each of the relevant empty container parks is likely to reduce competition for the supply of logistics software for the movement of containers at empty container parks. The ACCC notes that Containerchain has already been implemented at approximately 30 empty container parks in Australia, and that Containerchain is also looking to expand its operations domestically and internationally.<sup>34</sup>
106. The ACCC notes the reasons for Qube to implement Containerchain (as outlined at paragraph 93), including synergies associated with a common platform applied across many different empty container parks. While the notified conduct will have the effect of increasing the number of empty container parks that use Containerchain, the ACCC is not satisfied, at present, that the notified conduct will materially increase any market power held by Containerchain, or further reduce the attractiveness of any alternative logistics software.

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<sup>31</sup> ACCC Record of conversation with Secon Freight Logistics, 18 January 2013, p. 2.

<sup>32</sup> ACCC Statement of Reasons, 26 August 2011, paragraph 7.51.

<sup>33</sup> ACCC Statement of Reasons, 26 August 2011, paragraph 7.48.

<sup>34</sup> ACCC record of conversation with Containerchain, 10 April 2013.

107. In the circumstances, the ACCC does not consider that, at the present time, there is likely to be any significant public detriment arising, as a result of the notified conduct, from a reduction in competition for the supply of logistics software.

### **Balance of public benefits and detriments**

108. With respect to the decision to implement a system of scheduled access and to charge a fee for this access, the ACCC considers that, as was the case in its assessment of the previous notifications<sup>35</sup>, the likely public benefits will outweigh the likely public detriments. In particular, while there may be costs (including a loss of flexibility) from requiring container transport operators to use a system of scheduled access and to pay a fee for this access, these costs are likely to be offset by efficiencies such as reduced queuing at empty container parks. The ACCC also notes that this assessment has now been endorsed by the recent submission of the VTA following two years of experience with Containerchain at the Port of Melbourne.

109. However, on the basis that Qube would be likely to develop an alternative system of scheduled access to its empty container parks, in-house, the benefits and detriments identified by the ACCC in 2011 are unlikely to arise from the notified conduct in this instance. That is, the previously identified benefits and detriments arise from the introduction of a system to provide scheduled access rather than the notified conduct, being the decision to use Containerchain.

110. On this narrower basis, the ACCC considers that the notified conduct is likely to result in public benefits arising from:

- a more cost effective system for implementing scheduled access to Qube's empty container parks than the likely alternative
- a system that does not require further time or expense to develop, as Containerchain is available now
- benefits of compatibility with Qube's existing systems and systems used elsewhere in the industry, providing greater certainty, data transparency and reduced training costs for Qube and its customers. This includes the increased efficiency in the container transport operators' scheduling as a result of using the same system at many empty container parks and the subsequent availability of data through Containerchain.

111. On this narrower basis, the ACCC also considers that, at the present time, the notified conduct is unlikely to result in any significant public detriment, whether as a result of a loss of competition for the supply of logistics software, or otherwise.

112. The ACCC notes that, as with any notification, the ACCC may review the notifications again in the future, and may decide to revoke the notifications 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. In particular, if new information about the relevant areas of competition or the effect of the notified conduct becomes available, and the ACCC considers this information may alter its assessment of the balance of the likely public benefits and detriments of the notified conduct, the ACCC may choose to review the notifications at that time.

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<sup>35</sup> ACCC Statement of Reasons, 26 August 2011, paragraphs 7.50 – 7.53.



113. At the present time, the ACCC is satisfied that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public.

## **Conclusion**

114. Having regard to the information before it, including the submissions of Qube and interested parties, the ACCC is satisfied, at the present time, that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public from the notified conduct.

115. Accordingly, the ACCC does not intend to take any further action with respect to these notifications at this time.